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ABSTRACT

Trends in American higher education are surveyed in this report. Focus of the first paper, "Geographies I: A Nation Transforming and Transformed," by Regina M. J. Kyle is on demographic and regional changes affecting higher education. Extensive maps and charts explore the changing nature of American perceptions of the U.S. as a nation and the ways in which this perception influences educational needs and goals. An overview of various developments and their impact on higher education is presented by Edwin J. Allen, Jr. in the second paper, "A Local Habitation and a Name: Rural, Urban, and Suburban Environments." Three major changes in population distribution are cited: loss of population in central cities, with accompanying gain in suburban and rural areas; an increase in conflicts between the suburbanite and his rural neighbor; and changes in the structure of the family. The role of government in higher education is considered in the following three articles: "The Federal Government and Higher Education: A Review of the 95th Congress," by John W. Crewson; "Future Trends in Funding for Higher Education," by Kathryn Mohrman; and "A Department of Education? Summary of Proposals and Policy Implications," by John W. Crewson. An overview of the major legal decisions affecting higher education in 1978 is presented in a paper by Frank Gerry and Edward P. Kelley, Jr., "Legal Affairs and Higher Education." The relationship between state and higher education is surveyed in papers by Richard R. Nelson on state labor legislation and Phillip J. Hellmuth et al. on "Residency for Tuition Purposes in Wisconsin" (with accompanying data from the Education Commission of the States). The Ph.D. job crisis is discussed in a paper by W. Richard Cantwell and in a reprinted article entitled, "Working Together...The American Academy of Arts and Sciences and the History of Science Society." (PHR)

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NEW CHALLENGES, NEW NEEDS, NEW IMAGES: AMERICA IN TRANSITION

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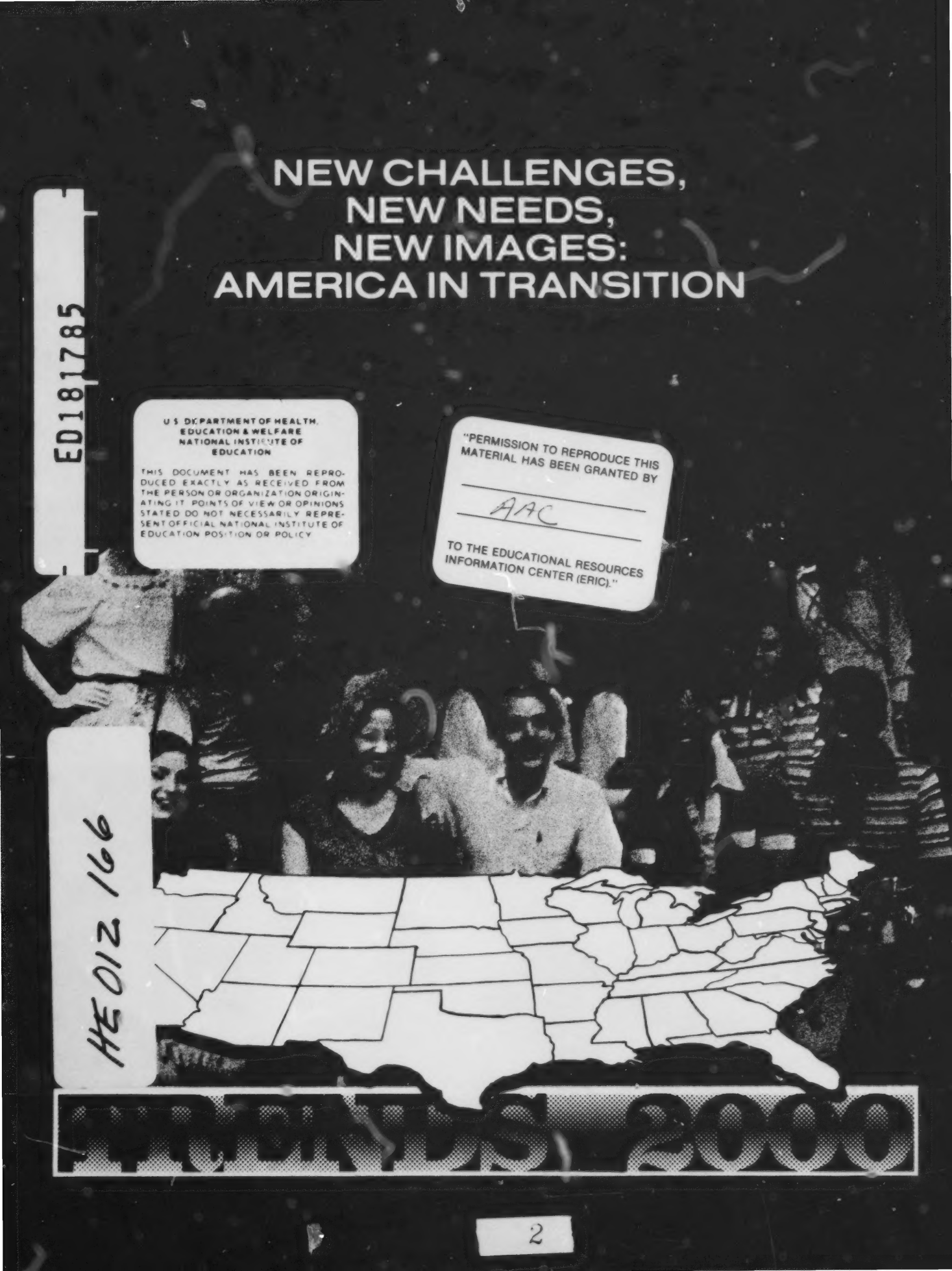

FUTURISTICS 2000

TRENDS 2000

NEW CHALLENGES, NEW NEEDS, NEW IMAGES: AMERICA IN TRANSITION

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1

Geographies I: A Nation Transforming and Transformed

An Overview of our Changing Perceptions of Ourselves, of Demographic and Regional Changes as They Affect Higher Education

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Quebec
New England
The Foundry
The Breadbasket
The Empty Quarter
Dixie
MexAmerica
The Islands
Calgary
Winnipeg
Minneapolis/St. Paul
Detroit
Cleveland
Chicago
New York
Washington
Kansas City
St. Louis
Louisville
Denver
Santa Fe
Dallas/Ft. Worth
Houston
New Orleans
Atlanta
Havana
APPALACHIAN MTS.

Geographies I: A Nation Transforming and Transformed

Regina M. J. Kyle

I. Maps and Metamorphosis

Nothing is so revealing of the many changes that have transformed a nation than a review of some of the maps by which those changes are charted: maps of the dreamer, manifesting the perceptions of the outsider; maps of the explorer, gradually outlining with accuracy dimensions and boundaries; maps of the bureaucrat, delineating administrative units; social and economic maps, transcending traditional administrative boundaries; maps of the soul, engraved and enshrined in the innermost beings of the various peoples who have called certain lands their own. The tensions which divide a nation often come from conflicting rights about these maps, these "geographies". Leadership—and indeed, survival,—may sometimes be measured by success in mediating these conflicting claims.

There was a time when America did not appear on the maps of the world by which the European defined reality.[1] In Map 1, published in Pierre d'Ailly's *Ymago Mundi* in 1483, the known world—Europe, Africa, and Asia—was contained in the northern hemisphere. This work had a profound influence on Christopher Columbus, making this somewhat primitive view of the world of interest to us here.

The map of the New World, Map 2, printed in a number of late fifteenth and early sixteenth century geographies reveals that marvelous combination of knowledge and imagination based on fear of the unknown that often characterizes man's first tentative explorations into strange realms.

The *Cosmographia* (Map 3) of Peter Apianus in 1551 draws on the Munster map, but makes North America a long thin strip almost touching both Europe and Asia at the tip. For him, America is primarily South America. By 1654, Sanson's *Cartes Generales* (Map 4) shows most of the present day United States as Mexico, Florida, and California, a vision to which I shall be returning as we examine more closely the Sunbelt states.

Throughout our history maps have been used to convey information for political purposes and to reveal fundamental and deep-rooted attitudes, as maps 5 and 6 indicate. Map 5 illustrates one issue on the Democratic platform in the election of 1884 and Map 6 demonstrates in geographic form the blessings of liberty and the costs of slavery.

When we turn to the present and look at the administrative boundaries, both state and regional, outlined in the basic map, Map 7, used by the Bureau of the Census, we see areas that are *constructs*, convenient groupings that in many instances bear little relationship to the economic, social, and cultural realities which play against the political and administrative units.

Joel R. Garreau's "The Nine Nations of North America," Map 8, published originally in the *Washington Post*, gives us a new focus for analyzing the inadequacies of current political boundaries to reflect the complex interactions of politics, economics, culture, and society.[2] His nine nations begin with the *Breadbasket*, including Nebraska, Iowa, Kansas, the Dakotas, Minnesota, and portions of Colorado, Illinois, Wisconsin, Missouri, Oklahoma, and Texas. It is here, he believes, that social changes become fully "Americanized," and he notes that while those who live in this nation are intensely regional, they are also internationalists who understand the challenges of interdependence among the nations of the world. The centers of higher education here are the land grant universities.

His next nation is *Ecotopia*, a region beginning south of San Francisco and extending through western Oregon and Washington. Rugged individualism and self-reliance are the defining characteristics of this area. While it is the land of lush vegetation and environmental concern, it is also the land of Boeing and the Trident Submarine. Ecotopia's center of higher education is Berkeley.

The *Foundry* is industry in decline, hope in flight, according to Garreau. Its centers are Newark, Trenton, Camden, Schenectady, Buffalo, Wilkes-Barre, Pittsburgh, Wheeling, Detroit, Akron, Toledo, South Bend, Gary, and Cleveland. This nation has been the heart of labor union development in the United States.

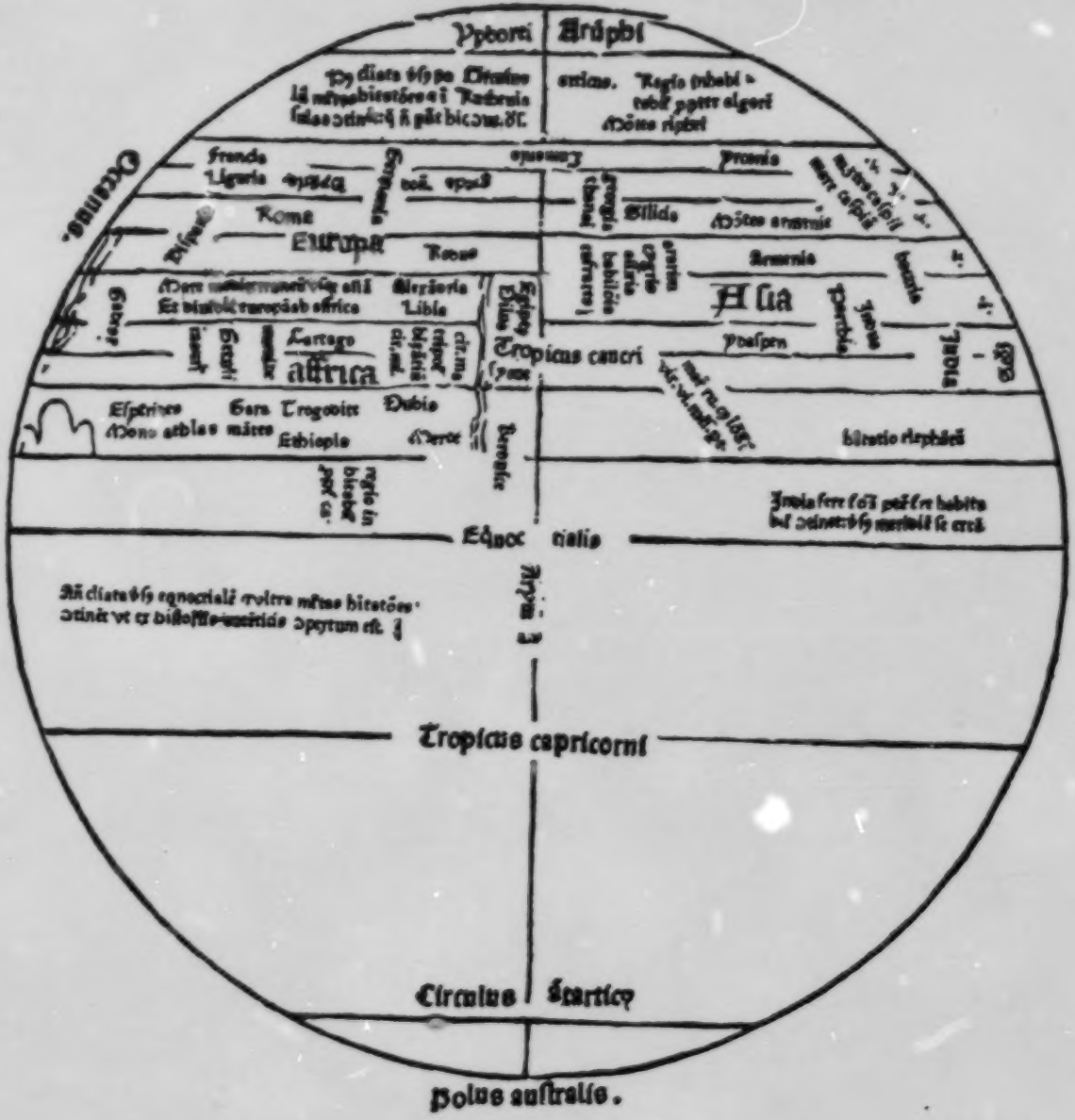
His *Empty Quarter* includes both the Mormonism of Salt Lake City and the hedonism of Las Vegas. It con-

6

Septima figura.

Hec figura ferulit. xiiii. capitulos plurib⁹ aliis pro diuisione terre in tres partes q̄ si nullius pro diffinitione maris ac quorūdam fluminū ac regionū hic gñ exemplū postro rum quia particularior diffinatio maioꝝ figurā requirit. Mare mediterraneū erit ab oceano per fretū marū circa hisperiā prope gades hercules. Mare vero rubrū erit ab oceano circa meridiē orientē q̄ meridiē in ēt versus meridiē circa meridiē orientē q occi dentē A cuius litere vis in ano terminos inuici oceani nauigatione attingimus.

Polꝰ septētriōal.



tains vast distances. It is a nation "being chewed up and spit out in order to light our lamps and power our air conditioners." He calls the Empty Quarter the "last great colony" of the other nations.

The *Islands* include Miami as the capital and center of the Carribean nation, providing a gateway to both North and South. The Latinization of Miami makes it one major U.S. city where you hear Spanish as often as English, and where the international banking industry, among others, has expanded greatly over the last decade.

For Garreau, *MexAmerica* covers "half a continent 200 to 300 miles north of the border with Mexico," including Texas, New Mexico, Arizona, and Southern California. He notes the importance of population growth in this area and the centrality of our relations to Mexico.

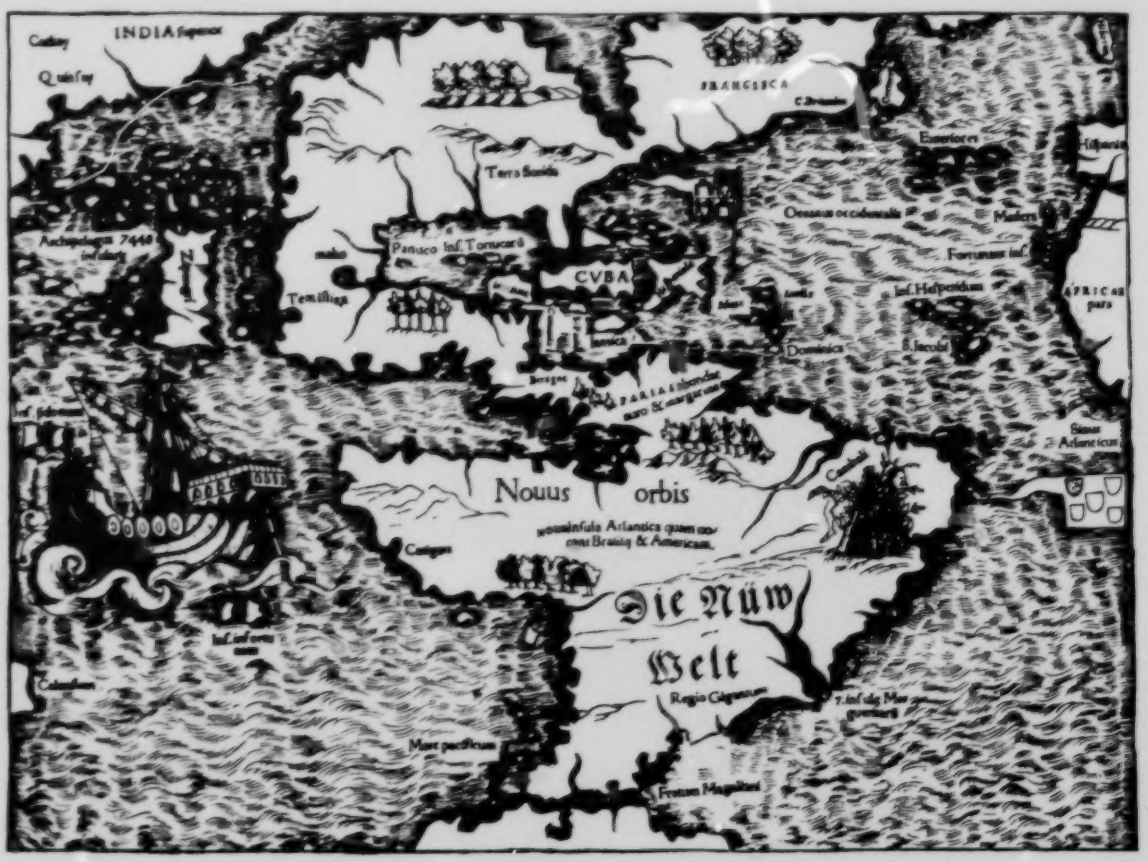
New England, of all nine nations, comes closest to maintaining traditional political boundaries. It has pockets of urban and rural poverty along with areas of great cultural wealth. It has had a longer period of time to adjust to a declining industrial base than has the Foundry. It is a nation of fundamental contradictions and has the strongest concentration of institutions of higher education of any nation in America.

Dixie has a "unifying history, language, food, dress, xenophobia and charm." He warns against the dangers of Dixie becoming another Foundry in its rush toward economic development.

Quebec is the last of the nine nations. In introducing this, Garreau tells us "One of the most instructive rules of nine nations is that existing sovereign boundaries are arbitrary and largely pointless. Good for flag-waiving ceremonies, not economic realities." He views Quebec as the sole independent nation in Canada, with the rest of the country sharing in the identities of the five nations of the United States on Canada's border.

I have summarized Garreau's vision of North America to provide both a context and a foil for my discussion and analysis of three different ethnic groups of North America—the Black, the Latino, and the Native American—in relation to the Sunbelt, and some of the implications of these geographies and peoples for the future of higher education. Whether one agrees or not with Garreau's generalizations, they provide a different and fruitful way of thinking about our regional differences.

MAP 2



8

CHARTA COSMOGRAPHICA, PROPRIA NATVRA ET OPERATIO

MAP 3

Circius
North northwest.

SEPTEN TRIO.

NORTH.

Aquilo
North northeast.

Lips
West southwest.

Zephyrus
OCCI OVEST.

DENS.

Argestes
West northwest.

MAP 4

SANSON'S MEXICO, FLORIDA AND CALIFORNIA

HOW THE PUBLIC DOMAIN HAS BEEN SQUANDERED

Map showing the 139,493,626 acres of the people's land—equal to

871,268 FARMS OF 160 ACRES EACH

Worth at $2 an acre, $278,806,052.

GIVEN BY

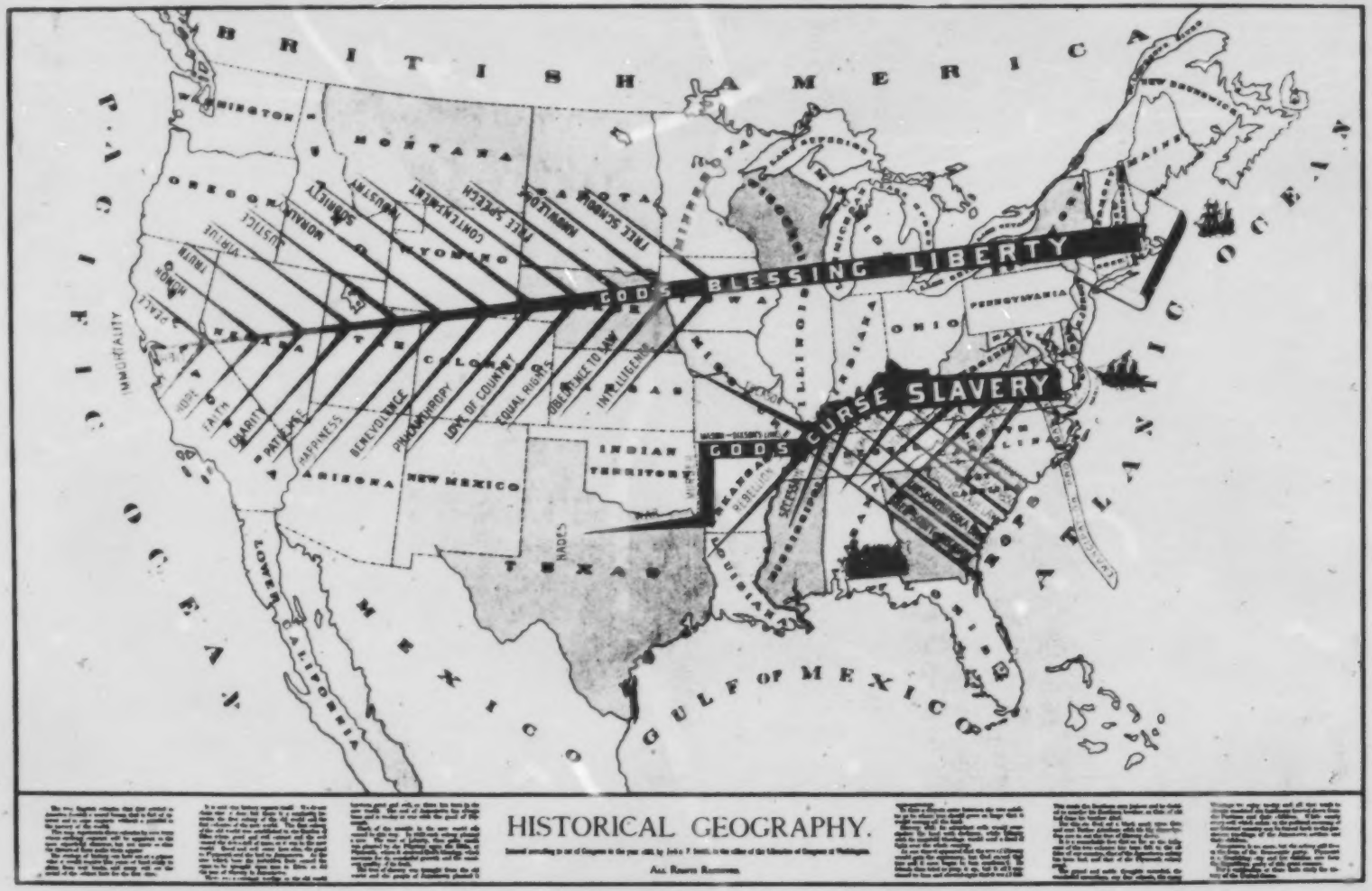
Republican Congresses to Railroad Corporations

This is more land than is contained in New York, New Jersey, Pennsylvania, Ohio, and Indiana.

We believe that the public lands ought, as far as possible, to be kept as homesteads for actual settlers; that all unearned lands heretofore improvidently granted to railroad corporations by the action of the Republican party should be restored to the public domain; and that no more grants of land shall be made to corporations, or be allowed to fall into the ownership of alien absentees.

DEMOCRATIC PLATFORM. 1884.

MAP 6


BRITISH AMERICA
PACIFIC OCEAN
ATLANTIC OCEAN
MEXICO
GULF OF MEXICO
WASHINGTON
OREGON
MONTANA
DAKOTA
WYOMING
NEBRASKA
KANSAS
COLORADO
UTAH
NEVADA
CALIFORNIA
ARIZONA
NEW MEXICO
INDIAN TERRITORY
TEXAS
MINNESOTA
IOWA
MISSOURI
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
MAINE
LOUISIANA
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
TENNESSEE
KENTUCKY
IMMORTALITY
HOPE
FAITH
CHARITY
PATIENCE
HAPPINESS
BENEVOLENCE
PHILANTHROPY
LOVE OF COUNTRY
EQUAL RIGHTS
OBEDIENCE TO LAW
INTELLIGENCE
VIRTUE
JUSTICE
WISDOM
TRUTH
MORALITY
SOBRIETY
INDUSTRY
CONTENTMENT
FREE SPEECH
FREE SCHOOLS
GODS BLESSING LIBERTY
GODS CURSE SLAVERY
SECESSION
REBELLION
HISTORICAL GEOGRAPHY.

MAP 1
CENSUS REGIONS AND DIVISIONS OF THE UNITED STATES
WEST
Mountain
Pacific
NORTH CENTRAL
West North Central
East North Central
NORTHEAST
New England
Middle Atlantic
SOUTH
South Atlantic
East South Central
West South Central
MONT.
N. DAK.
MINN.
MAINE
OREG.
IDAHO
S. DAK.
WYO.
WIS.
MICH.
N.Y.
VT.
N.H.
MASS.
CONN.
R.I.
CALIF.
NEV.
NEBR.
IOWA
UTAH
COLO.
PA.
N.J.
MD.
D.
MO.
OHIO
KANS.
ILL.
IND.
W. VA.
VA.
KY.
ARIZ.
N. MEX.
N.C.
OKLA.
ARK.
TENN.
S.C.
TEXAS
MISS.
ALA.
GA.
LA.
FLA.
ALASKA
HAWAII
U.S. DEPARTMENT OF COMMERCE Social and Economic Statistics Administration BUREAU OF THE CENSUS

II. Relationships: People and Places

Before I focus on the complex demographics of the Southern tier, I would like to reflect briefly on some general characteristics of population and society in the United States.

Maps are usually drawn to a scale representative of the physical dimensions of the territory being described. Map 7, which I referred to earlier, shows the political divisions of the United States according to land area. Map 9 is a distortion map in which the states are drawn to size according to their respective populations, not area. This provides some interesting insights into different regions of the nation. For example, it makes it quite clear why Joel Garreau called the area including much of Montana, Idaho, Wyoming, Colorado, and Utah the Empty Quarter. It also points out one element in the seemingly disproportionate power of the "megastates."[3] The megastates include New York, Pennsylvania, Massachusetts, Ohio, Illinois, Michigan, Florida, Texas, and California.

In December 1978, the Select Committee on Population of the U.S. House of Representatives issued a report *Domestic Consequences of United States Population Change*. The following table lists some of its major findings and recommendations.[4]

TABLE 1

Selected Findings and Recommendations from Domestic Consequences of United States Population Change*

FINDINGS	RECOMMENDATIONS
Population Size	
1. In the quarter-century between 1950 and 1975 the United States population increased by over 61 million people—or by about 40 percent. Such growth is rare among developed countries, where fertility and mortality generally are both low and population growth is minimal.	1. *Congress should investigate more fully the effects of the population size and growth rate of the United States on the well-being of our people.*
4. Population size can change only through natural increase or decrease (when the number of births is larger or smaller than the number of deaths) or through an imbalance between immigration, or both. Recent declines in fertility have reduced the role of natural increase in determining our total population growth, and immigration—both legal and illegal—is becoming an increasingly important component of the growth of the U.S. population.	2. There is a need to create greater awareness among our citizens of the causes and consequences of population change. *Federal funds should be available to support population education in elementary and secondary schools and programs to educate public officials at all levels about demographic change and public policy.*

*Numbering follows the sequence in the Report.

FINDINGS

RECOMMENDATIONS

Education

15. The primary school age population is projected to decline between now and 1985, to increase between 1985 and 1995, and to decline again from 1995 to 2010. These same trends will be reflected in the secondary school population and college age population about 5 and 10 years later. Therefore, solutions for disposing of excess educational resources today must also consider the projected enrollment increases of the future. Policy makers must balance the cost today of unemployed surplus physical and human resources against the cost of building them up later when they may be needed for larger school population.

16. Data needed for proper educational planning are generally not available, particularly for local areas. Predicting future youth population is very difficult for small areas, such as a school system, because of the difficulty of predicting patterns, particularly for young adults with children.

7. Given the impact of demographic change on the demand for educational facilities and the need for more flexibility in their use, *the Federal Government should encourage and assist local districts to make available underutilized school buildings for the educational needs of the entire population and the provision of other social services. The Select Committee on Population further recommends legislation to require that Federal agencies investigate the possibility of utilizing empty school facilities before constructing new Government buildings, and programs to assist school administrators in the disposition of excess school facilities, if that is desirable.*

8. Given the fluctuation in school enrollments and the resultant demand for teachers, *the Select Committee on Population supports Federal programs to increase flexibility in the supply of teachers and to retrain excess teachers for alternative careers.*

Work

17. The labor force has increased rapidly in the past decade, with two important consequences. First, there is an increased proportion of inexperienced workers, who have higher unemployment rates than experienced workers; and consequently the average unemployment rate is higher than it would be otherwise. Second, group-specific employment rates have increased, for both experienced and inexperienced workers. Black male teenagers have been especially hard-hit; in 1976 their measured unemployment rate was 35.4 percent, five times that of the labor force as a whole.

18. In 1950, about 31 percent of all women were in the labor force; by May 1978, 50 percent were working or seeking work outside the home. As a result of this growth, only one-sixth of American families now fit the traditional picture of a breadwinner husband and a homemaker wife caring for dependent children.

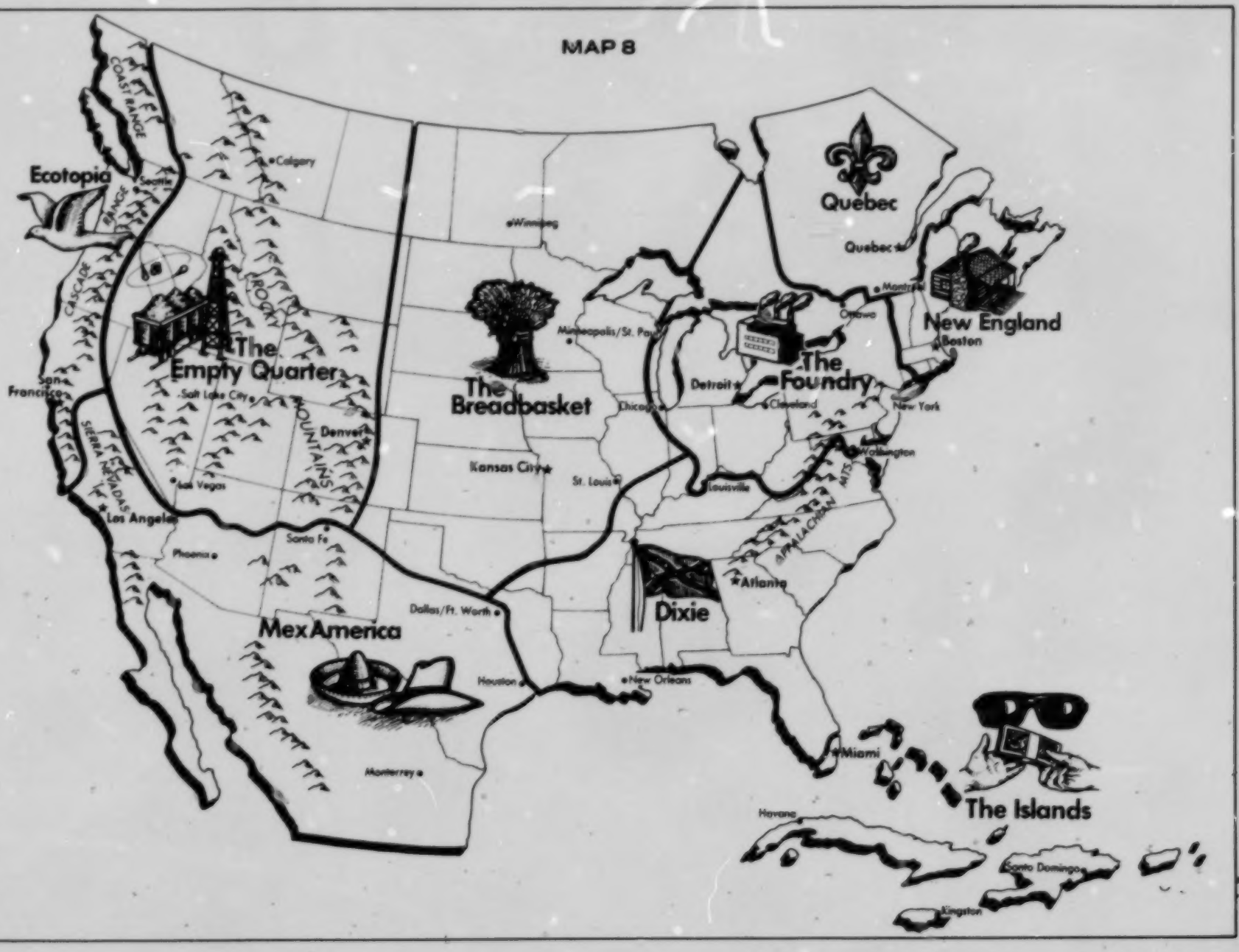
47. The growth of employment and immigration are closely linked. Although it is not yet entirely clear whether jobs or people move first, recent studies suggest that migration of firms has not been an important component of employment shifts. Most of the growth of local employment has been due to expansion of existing firms and establishment of new ones.

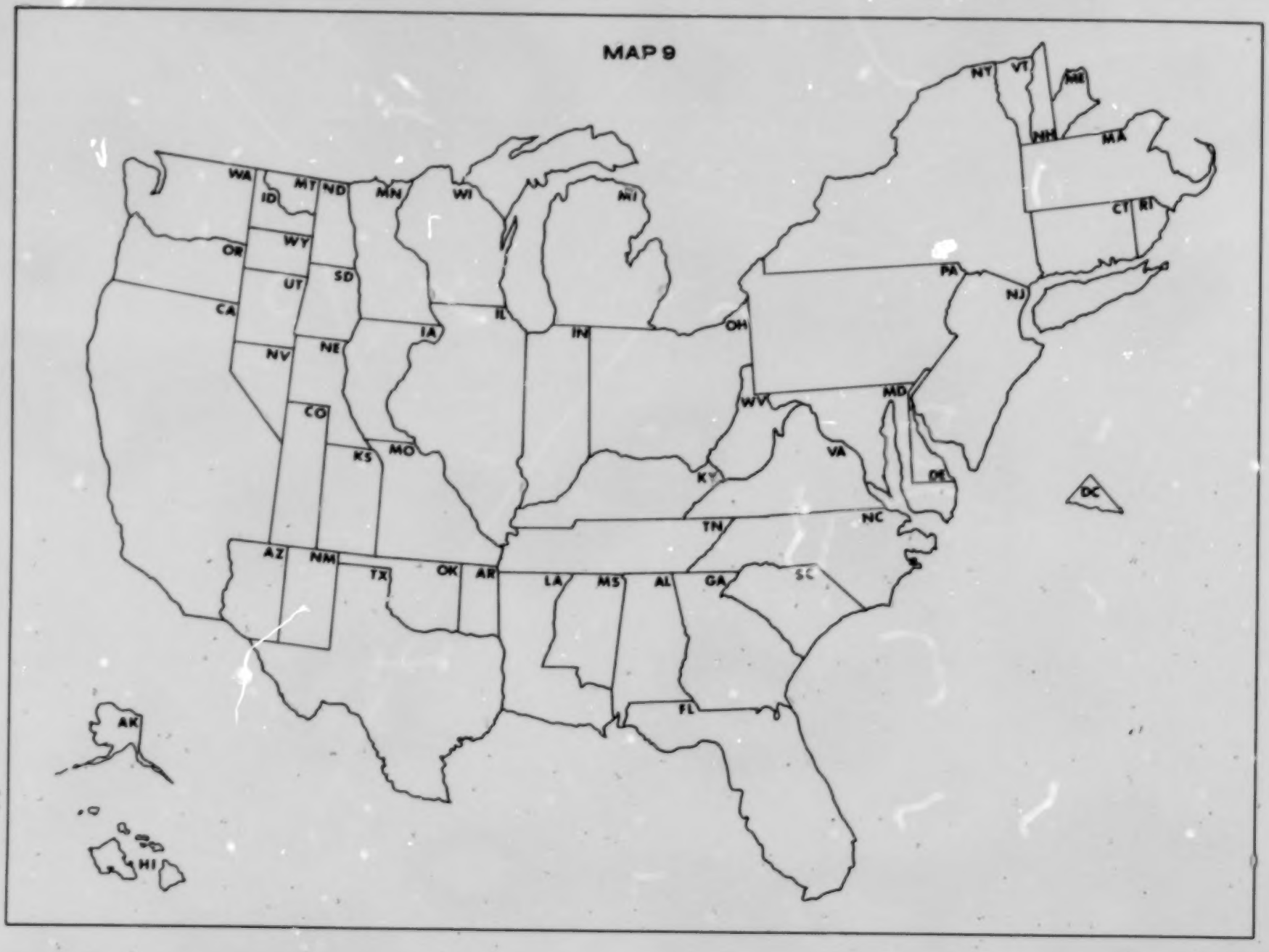
9. *Demographic factors should be considered when Federal economic (and particularly employment) policies are formulated. For example, demographic factors should be considered in formulating policies to:*

a. establish full employment goals;
b. determine the extent of both employment and underemployment;
c. increase the employment of particular demographic groups, such as by targeted training and job identification for the women and youth who represent most of the new entrants into the labor force;
d. determine the minimum wage in such a way as to take into acocunt its effects on various demographic groups; and
e. match workers with jobs they wish to take.

6. Given the increasing number of women in the labor force who have young children and the need for more flexible work schedules, *the Select Committee on Population supports the institution of flexitime and part-time work schedules in all areas of public and private employment.*

MAP 8


Ecotopia
Calgary
Seattle
Winnipeg
Quebec
Quebec
Montreal
Ottawa
New England
Boston
The Empty Quarter
Salt Lake City
Denver
San Francisco
Las Vegas
Los Angeles
Phoenix
Santa Fe
The Breadbasket
Minneapolis/St. Paul
Chicago
Kansas City
St. Louis
Detroit
Cleveland
The Foundry
New York
Washington
Louisville
Atlanta
Dixie
Dallas/Ft. Worth
Houston
New Orleans
Mex America
Monterrey
Miami
The Islands
Havana
Santa Domingo
Kingston


MAP 9
WA
ID
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MN
WI
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NY
VT
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NH
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OR
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OH
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NV
NE
WV
MD
CO
VA
KS
MO
KY
DE
DC
TN
NC
AZ
NM
TX
OK
AR
LA
MS
AL
GA
SC
FL
AK
HI

Regional Change

37. The recent decline in fertility and changing migration patterns have resulted in significant shifts in the size and structure of the regional and local populations within the U.S. During the 1960s, when fertility was higher, a community could lose population through migration and still experience growth through natural increase. Today, natural increase is low, and migration is the primary determinant of the changes in local population size.

52. If migration continues in its recent (1965-1975) pattern and pace, at least eleven seats in the House of Representatives will be reapportioned after the 1980 Census. The Northeast and East North Central States will lose seats, with New York alone expected to give up four seats. The South will probably gain as many as seven seats and the West four.

22. Because population shifts change the socio-economic profile of local populations and some localities bear a disproportionate burden in supporting the disadvantaged in the United States, *the Federal Government should assume a fair share in the provision of services which have a large component of income redistribution, such as education, health, and welfare.*

29. *The Census Bureau should report more fully on the long-term consequences of projected population trends for various institutions, and the Demographic Analysis Division of the Census Bureau should be provided with sufficient funds and staff to perform this task.*

30. *All major Presidential reports such as the Employment and Training Report, the Environmental Quality Report, the Urban Growth Report, and the Economic Report should include more extensive demographic analysis, including identification of the policies and programs that will be affected by future population changes and recommendations for action by the Congress and the Executive. Congress should exercise more vigorously its oversight responsibilities to ensure that these reports are prepared in a timely manner and are consistent with the original intent of the statutes mandating the reports.*

The emphasis in the report on the general lack of understanding of the implications of population change is important. Policy makers in every sphere of action, including education, need to have better information about the dimensions and characteristics of demographic shifts and the implications of these for the future of individual institutions. The focus in this essay on the Black, Latino, and Indian populations, especially in the Southwest, is one step in that direction.

A New Sunbelt

Recent discussions of the Sunbelt have concentrated primarily on the growth and development of business and industry, including related population changes. Indeed, a recent comparison of major markets in the Frost Belt and the Sunbelt by *Sales & Marketing Management*, provides some interesting data and projections for the two areas.

It is important to remember that while the Sunbelt states have experienced great growth in the last ten years, these states still have twenty-three of the twenty-five metro markets whose household incomes are the lowest in the United States. The large cities here are also beginning to experience some of the problems which the older industrial cities of the Frost Belt have known for some time. It is equally important to note that economic development is but one aspect of the profound changes which are transforming this part of the country. An understanding of these broader demographic, social, and cultural factors will present policy makers in higher education with questions to be answered and challenges to be met.

A second key element in the emergence of the "New Sunbelt" is

TABLE 2

How leading markets in the Frost Belt and the Sunbelt compare

S&MM Metro Market	Projected 1982 Pop (Thous.)	% Change in Population 1972-77	% Change in Population 1977-82	Net Migration 1970-76 Rate (Pct.)	Net Migration 1970-76 Number (Thous.)	Projected 1982 EBI Per Hsld.	% Gain 1977-82
Frost Belt							
New York	9,303.0	- 5.2%	- 2.1%	- 7.0%	- 538.8	$23,572	+30.1%
Chicago	7,081.8	- 1.1	+ 0.9	- 4.0	- 281.6	29,510	36.1
Philadelphia	4,864.3	- 1.1	+ 1.1	- 4.0	- 156.5	26,734	36.7
Detroit	4,283.1	- 3.1	- 2.3	- 5.7	- 251.4	31,268	40.4
Boston	3,922.7	+ 4.9	- 1.5	- 1.5	- 54.5	24,509	31.7
Nassau-Suffolk	2,811.4	+ 2.7	+ 4.4	+ 1.7	+ 43.8	31,039	29.4
Pittsburgh	2,202.3	- 5.0	- 3.6	- 5.0	- 120.4	24,278	36.3
Cleveland	1,886.1	- 7.6	- 3.3	- 8.1	- 167.9	26,797	34.4
Cincinnati	1,370.2	- 2.0	- 0.2	- 6.8	- 75.0	25,284	38.3
Buffalo	1,276.9	- 3.1	- 2.7	- 4.3	- 58.5	22,353	29.1
Total	**39,001.8**	**- 2.2%**	**- 0.6%**	**- 4.7%**	**-1,760.8**	**$26,596**	**+34.3%**
Sunbelt							
Los Angeles-Long Beach	7,256.7	+ 0.9%	+ 3.0%	- 5.1%	- 356.2	$23,756	+31.7%
San Francisco-Oakland	3,286.3	+ 1.4	+ 2.8	- 1.2	- 38.5	26,853	35.6
Houston	2,887.7	+15.5	+15.9	+11.5	+ 229.9	29,841	46.0
Dallas-Fort Worth	2,812.9	+ 3.8	+ 6.4	+ 2.3	+ 54.8	27,333	39.8
Anaheim-Santa Ana-Garden Grove	2,075.2	+15.8	+13.6	+17.0	+ 242.0	26,120	30.1
San Diego	1,910.3	+18.0	+11.5	+14.1	+ 191.2	21,587	28.0
Miami	1,596.5	+ 7.4	+ 8.5	+13.8	+ 175.2	25,561	44.4
Tampa-St. Petersburg	1,574.8	+15.9	+10.0	+26.5	+ 288.0	18,691	39.4
Riverside-San Bernardino-Ontario	1,464.0	+ 9.2	+12.3	+ 5.5	+ 62.9	21,015	33.5
Phoenix	1,455.6	+16.9	+14.4	+20.9	+ 203.0	23,055	36.1
Total	**26,320.0**	**+ 7.2%**	**+ 7.9%**	**+ 4.8%**	**+1,054.3**	**$24,748**	**+35.7%**
U.S.	**228,290.4**	**+ 4.0%**	**+ 4.8%**	**N.A.**	**N.A.**	**$23,800**	**+37.4%**

N.A.—Not applicable

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Sources: *Sales & Marketing Management's 1978 Survey of Buying Power—Part II*; Census Bureau, *Estimates of the Population of Counties and Metropolitan Areas*, Series P-26 state reports.

the central role being played by the two dominant minority groups, the Blacks and the Latinos. In many countries, one or a combination of these two groups forms a majority of the population, and this may extend to individual states before the end of the century. As Tables 3, 4, and 5 indicate, the median age for both Blacks and Latinos is substantially lower than the median age for the total population. These two groups historically a source of cheap labor in these states, are growing political and economic forces and will become an even larger proportion of the labor force as the percent of 18-24 year olds declines in the decade ahead.

While still underrepresented in relation to white non-Latino participation in postsecondary education, both Blacks and Latinos are attending colleges and other postsecondary institutions in rising numbers. Again, with the decrease in 18-24 year old cohort, we may confidently expect colleges to recruit even more intensively from these communities. The years since the Brown decision have witnessed, first in the Black community and now in the Latino community, rising expectations about the nature and scope of their respective roles in the cultural, social, and economic affairs of the United States. While their base of power is still relatively restricted, it is growing, and several points about each group should be noted.

TABLE 3

Selected Sunbelt States with Blacks Dominant Minority Group

State	Population Group			Population		Median Age	
Alabama	State	Total	1970	3,444,148	(3,725,100)*	27.0	(29.2)*
	State	Total	1960	3,266,740		25.9	
	Black		1970	902,869		21.4	
	SS/SL		1970	13,313		21.7	
Georgia	State	Total	1970	4,589,569	(5,027,800)*	25.9	(27.9)*
	State	Total	1960	3,942,936		25.9	
	Black		1970	1,184,081		21.4	
	SS/SL		1970	29,824		22.1	
Louisiana	State	Total	1970	3,640,442	(3,931,400)*	24.8	(27.4)*
	State	Total	1960	3,257,022		25.3	
	Black		1970	1,085,270		20.6	
	SS/SL		1970	69,678		22.9	
Mississippi	State	Total	1970	2,216,850	(2,387,800)*	25.1	(27.3)*
	State	Total	1960	2,178,141		24.1	
	Black		1970	815,630		19.3	
	SS/SL		1970	8,182		22.0	
Tennessee	State	Total	1970	3,923,726	(4,295,400)*	28.1	(30.0)*
	State	Total	1960	3,567,089		27.9	
	Black		1970	620,508		22.4	
	SS/SL		1970	13,873		21.0	

*Figures in parenthesis are for 1977 and are taken from S & MM's "Survey of Buying Power," July 24, 1978.

TABLE 4

Selected Sunbelt States with Latinos as Dominant Minority Group

State	Population Group			Population		Median Age	
Arizona	State	Total	1970	1,770,893	(2,338,900)*	26.3	(28.2)*
	State	Total	1960	1,302,161		25.6	
	SS/SL		1970	333,349		19.4	
	Blacks		1970	52,653		21.0	
Colorado	State	Total	1970	2,207,259	(2,657,000)*	26.2	(28.1)*
	State	Total	1960	1,753,925		27.8	
	SS/SL		1970	286,467		19.5	
	Black		1970	66,274		22.3	
New Mexico	State	Total	1970	1,015,998	(1,215,000)*	23.9	(26.4)*
	State	Total	1960	951,023		22.7	
	SS/SL		1970	407,286		19.8	
	Black		1970	19,439		20.0	

*Figures in parenthesis are for 1977 and are taken from S & MM's "Survey of Buying Power," July 24, 1978.

TABLE 5

Key Sunbelt States with Both Blacks and Latinos as Dominant Minority Groups

State	Population Group			Population		Median Age	
California	State	Total	1970	19,957,304	(22,015,400)*	28.1	(29.8)*
	State	Total	1960	15,720,860		30.0	
	Black		1970	1,397,138		23.1	
	SS/SL		1970	3,101,589		21.4	
Florida	State	Total	1970	6,789,383	(8,657,700)*	32.4	(34.1)*
	State	Total	1960	4,952,788		31.1	
	Black		1970	1,041,535		21.5	
	SS/SL		1970	451,383		29.7	
Texas	State	Total	1970	11,195,416	(12,867,200)*	26.4	(28.1)*
	State	Total	1960	9,581,512		26.9	
	Black		1970	1,395,853		22.5	
	SS/SL		1970	2,059,671		19.3	

*Figures in parenthesis are for 1977 and are taken from S & MM's "Survey of Buying Power," July 24, 1978

The Black Community

1. There has been a gradual but steady growth in black-owned and black-controlled business in the geographic area under consideration.
2. Significant gains in electoral office by Blacks have been made in the last ten years in both the South and in northern industrial centers with large Black populations.
3. There have been major developments in initiating courses at all levels of education which treat the contributions of Blacks to American Society seriously, and which have given both the younger and older generations a deeper awareness of their cultural heritage.
4. Formal and informal networks of professional Blacks exist and are becoming important in gaining certain political, economic, and social victories on a regional and national level.
5. There are numerous radio stations and a wide range of publications reaching all segments of the Black community.
6. Marketing experts are analyzing and projecting to meet the needs/desires of the Black community.
7. While Blacks have made some gains in the traditional trade unions, many are still very unhappy with their status and opportunities within many of these unions.
8. Black unemployment and Black teenage unemployment rates, in particular in urban areas, pose a continuing and critical problem.
9. In relation to whites, Blacks still must have a higher education level for similar jobs.

The Latino Community

1. There are two Latino communities: citizens and legal residents, and undocumented workers. They are roughly of comparable size (over 11 million each, conservative estimate). Most of the items listed here concern the legal community. A few refer to the undocumented workers and this is indicated. These workers will be discussed in the international issue of *TRENDS 2000*.

2. The highest proportion of Latinos in the Sunbelt states, with the exception of Florida, are second, third, and fourth generation citizens. (Ranging from 60 percent to 80 percent.)

3. While the Latino protest movement began later than the Black one, it is as serious and as deep as that one. The Latino media networks are perhaps even better developed and more sophisticated than those of the Black community.

4. In many states, and in the nation as a whole, the median age of Latinos is even lower than that of Blacks.

5. As with the Black community, the Latinos are emerging as a major market force. Over the last two years, professional marketing publications such as *Sale and Marketing Management* have been devoting major resources to developing an understanding of this market.

6. Adequate data on the status and condition of the Latino population is at last being collected, organized, and published by various federal agencies. A broader range of studies is being done which indicates that the traditional view of the Latino community as passive and unlikely to make strong demands for greater recognition and involvement in American society is not accurate.

7. Some recent comparative studies by social anthropologists of the undocumented workers indicate that these Latinos are among the most dedicated and most ambitious of their fellow countrymen in Mexico, with strong family ties and advanced goals for their children.

8. Latino political gains, while not as striking as those of the Blacks, continue to be significant.

9. Like the Black community, many Latinos feel they have been discriminated against in the traditional union movement.

For colleges and universities of all types, an understanding of the contributions, needs, and aspirations of these two groups is essential. Several of the challenges facing higher education in the 1980s relate directly to this.

Maps 10 and 11 are estimated state comparisons of the 18-24 year old Black and Latino populations in 1976. One caution here. The present estimated numbers of both Blacks and Latinos are low. The data concerning Latinos is particularly inadequate, so the figures represented on the maps are very low in relation to actual numbers. What the maps do indicate in general is those states where a large proportion of the potential college student population is either Black, Latino, or a mix of both communities. In referring back to the Sanson map where Florida, Texas, and California dominate, we see again the emergence of this part of the country as a vital force in shaping the image of the United States, in defining what we really mean by American tradition and culture.

Before I discuss some of the implications of demographic and social change in the South for higher education, I would like to look briefly at a third community, the Native American. This group has not attracted the attention of the marketing specialists in the way the other two have. For our reflections here, however, it is important to include them, especially as we turn to the issue of what is "American culture" and "American studies".

The Native American Community

Native Americans live in all four regions of the United States, with the largest numbers in the South and West.

Over 340,000 Native Americans live in cities and 420,000 in rural areas, with only 28 percent of them living on reservations. Their median age is 20.4. Sunbelt states with a population of more than 50,000 Native Americans include California,

TABLE 6

Native American Population by Region — 1970

Region	Total	Male	Female
Northeast	45,720	21,622	24,098
North Central	144,254	69,852	74,402
South	194,406	96,555	97,851
West	379,214	187,355	191,859

Source: U. S. Census of Population: 1970, PC(2)-IF American Indians.

MAP 10
STATE COMPARISONS OF 18-24-YEAR-OLD SPANISH-ORIGIN POPULATION

Source: Policy Analysis Service, American Council on Education. Based on unpublished data from the Survey of Income and Education, National Center for Education Statistics, 1973.

New Mexico, Arizona, and Oklahoma. As with the Black and Latino communities our present data about Native Americans is inadequate.

A recent review on federal Indian policy and labor statistics points out that the educational levels of Indians are lower than those of the general population and that this relates directly to the high unemployment levels among them.[5] Almost two years ago the final report of the American Indian Policy Review Commission was submitted to Congress. The following selected list of recommendations from this report includes several of interest to colleges and universities.

1. That the Congress require the Assistant Secretary of Indian Affairs to provide a comprehensive annual report on Indian matters, containing current and accurate data.

2. That the Congress direct all executive agencies to act in accordance with the principle: the trust responsibility to American Indians is an established legal obligation that requires the United States to protect and enhance Indian trust resources and tribal self-government and to provide economic and social programs to raise the Indian's standard of living and social well-being to the level of the rest of the American people.

3. That the long-term objective of Federal Indian policy is to develop tribal governments into fully operational governments with the same powers and responsibilities as other local governments.

4. That a Department of Indian Affairs or an independent agency be created to administer all Indian matters now taken care of by other agencies.

5. That the Congress provide funds and technical assistance for the preservation, consolidation, and acquisition of Indian lands upon which to build tribal futures.

6. That the Bureau of Indian Affairs and the Department of Labor be required to coordinate their employment and training programs with tribal development programs and the Economic Development Administration, and that education be relevant to needs.

7. That the Congress enact legislation to aid tribal governments in assuming the responsibility for education.

8. That appropriate services be provided for off-reservation Indians, when feasible, through urban Indian centers.

9. That a process be set up by which terminated Indian tribes may be restored to that status of federally recognized Indian tribes.

10. That the Congress affirm its intention to recognize all Indian tribes as eligible for the benefits and protections of general Indian legislation and policy.

11. That the Congress appropriate funds to assist school systems in developing educational programs in Indian affairs.

MAP 11
STATE COMPARISONS OF 18-24-YEAR-OLD BLACK POPULATION

Source: Policy Analysis Service, American Council on Education. Based on unpublished data from the Survey of Income and Education, National Center for Education Statistics, 1978.

III. Shaping the Future: Challenges for Higher Education

Colleges serve four geographic communities in varying ways and degrees: local, regional, national, and international.

COMMUNITIES SERVED BY COLLEGES AND UNIVERSITIES

The nature and extent of the services to each of these communities, the balance and proportion, should relate directly to the goals which each institution has established for itself over the years and the new directions it may wish to take in the future. The challenges of service to the three groups discussed here relate most directly to the local, regional and national communities, although there are some international considerations involved.

There is no institution of higher education in the United States uninvolved in issues related to both the contributions of Blacks, Latinos, and Native Americans, and their needs and aspirations. To say that every college and university has a responsibility to meet the challenges these issues present is to ask some fundamental questions about social and moral accountability. There are questions of ethics and values to be raised that cannot be avoided—nor should they be framed in the either/or context that leads to inappropriate modes of analysis and inadequate responses. Clark C. Abt, among others concerned with corporate management problems, has proposed in his book, *The Social Audit for Management*, the development of a system of social auditing appropriate to corporations.[6] We need to develop a similar system among colleges and universities, one that applies to our curriculum and research policies as well as to admissions, employment, and financial affairs. Let me be quite clear about what I am *not* suggesting. I am not proposing that we violate academic freedom but that we cherish it and use it properly. I am proposing that we examine ourselves with as much rigor as we demand of others—of the government, of private enterprise, of our students. In many areas—admissions, employment, student financial aid, facilities requirements, among others—we have been forced into accountabiliity by external agencies.

In matters of curriculum, research, and investment policy we have been and will continue to be pressured by our students, by other groups in society, by the fluctuations of the economy, and the international situation, to change and go in new directions. The health and the survival of colleges and universities require that institutions regain the direction of their activities. The only thing that will accomplish this is an examination of mission and goals, including a complete audit of the institution's social and ethical responsibilities to the *communities* it serves.

In reflecting on the changes in the Sunbelt states related to the Black, Latino, and Native American populations, two sets of questions confront the colleges. One set deals with students, the second with curriculum.

For many colleges and universities located in the Sunbelt or in northern industrial cities a larger percentage of their potential pool of students will be Blacks and Latinos in the 1980s and 1990s. A higher percentage of the pool, of whatever ethnic background, will come from poor and lower-middle income families. The decision to seek advancement through higher education will be a difficult one for many of these men and women, yet the average educational level of the American worker has been rising steadily. Table 7 indicates the changes between 1973 and 1978.

TABLE 7

Educational Levels and the Labor Force Participation

	1973	1978
High School:		
Less than 4 years	47.6	46.2
4 years	66.9	68.5
College:		
1-3 years	65.7	69.6
4 years or more	78.2	79.9

Source: Scott C. Brown, *Educational Attainment of Workers—Some Trends 1975 to 1978*

Unemployment rates are higher among those with less than a high school education than among those who have graduated from high school or have further education. The structure of the job market situation is raising the educational requirements for jobs that in the past have all required a high school or college diploma—so much so that in March 1978, 25 percent of the college graduates employed were in jobs that in the past have not required a college education.[7]

The commitment to provide opportunities for social and economic advancement to those who have not had such opportunities open to them before implies a commitment to develop the kind of institution within which this education can occur. Such an institution must be flexible, responsive to new needs, and dedicated to its role of serving the local community. This may require some reexamination of curriculum, of support services, and of faculty development programs.

The continuing review of curriculum is a responsibility of all institutions. For some this will include the appropriateness of the curriculum in serving the needs of various groups of students, including those from the Black, Latino, and Native American communities. For all, it means a rethinking of programs dealing with American culture and history, as well as regional and local developments. The establishment of separate programs in Afro-American, Chicano, Native American, and Puerto Rican studies was a necessary first step in establishing their presence in the cirriculum. It is time now that they become an integral part of the broader studies of the cultural, social, and economic development of the United States—a new series of maps to overlap with the old.

There are other challenges which the demographics of the "New Sunbelt" pose for colleges and universities, but these two are central. We can find answers to the "why" of what we are and do only in the context of *who* we serve and *what* we teach—by example and by word.

FOOTNOTES

1. The maps shown in "Geographies I" are listed below:

   Map 1: Pierre d'Ailly, *Ymago Mundi*. Map of the World, 1473. Reprinted with permission from A. E. Nordenskiold, *Facsimile-Atlas to the History of Cartography*. New York, Dover Publications, Inc., 1973.

   Map 2: Sebastian Munster, Map of the New World, 1540. Facsimile in the collection of the author.

   Map 3: Peter Apianus, *Cosmographia*, the World, 1551. Facsimile in the collection of the author.

   Map 4: Nicolas Sanson, *Cartes Generales*, Mexico, Florida, and California, 1654. Reprinted with permission from R. V. Tooley, *Maps and Map-Makers*. New York, Crown Publishers, Inc., 1978.

   Map 5: "How the Public Domain Has Been Squandered." Reprinted with permission from the Library of Congress.

   Map 6: John F. Smith, *Historical Geography*, 1888. Reprinted with permission from the Library of Congress.

   Map 7: Bureau of Census, Map of the United States indicating administrative regions.

   Map 8: Joel R. Garreau, "The Nine Nations of North America," 1979. Reprinted with permission from *The Washington Post*.

   Map 9: Association of American Colleges, Population Map of the United States, 1979.

   Map 10: American Council on Education, State Comparisons of 18-24 year-old Spanish Origin Population, 1978.

   Map 11: American Council on Education, State Comparisons of 18-24 year-old Black Population, 1978.

2. The summary in the following pages is from Garreau's article "Reconsidering America," *The Washington Post*, March 4, 1979.

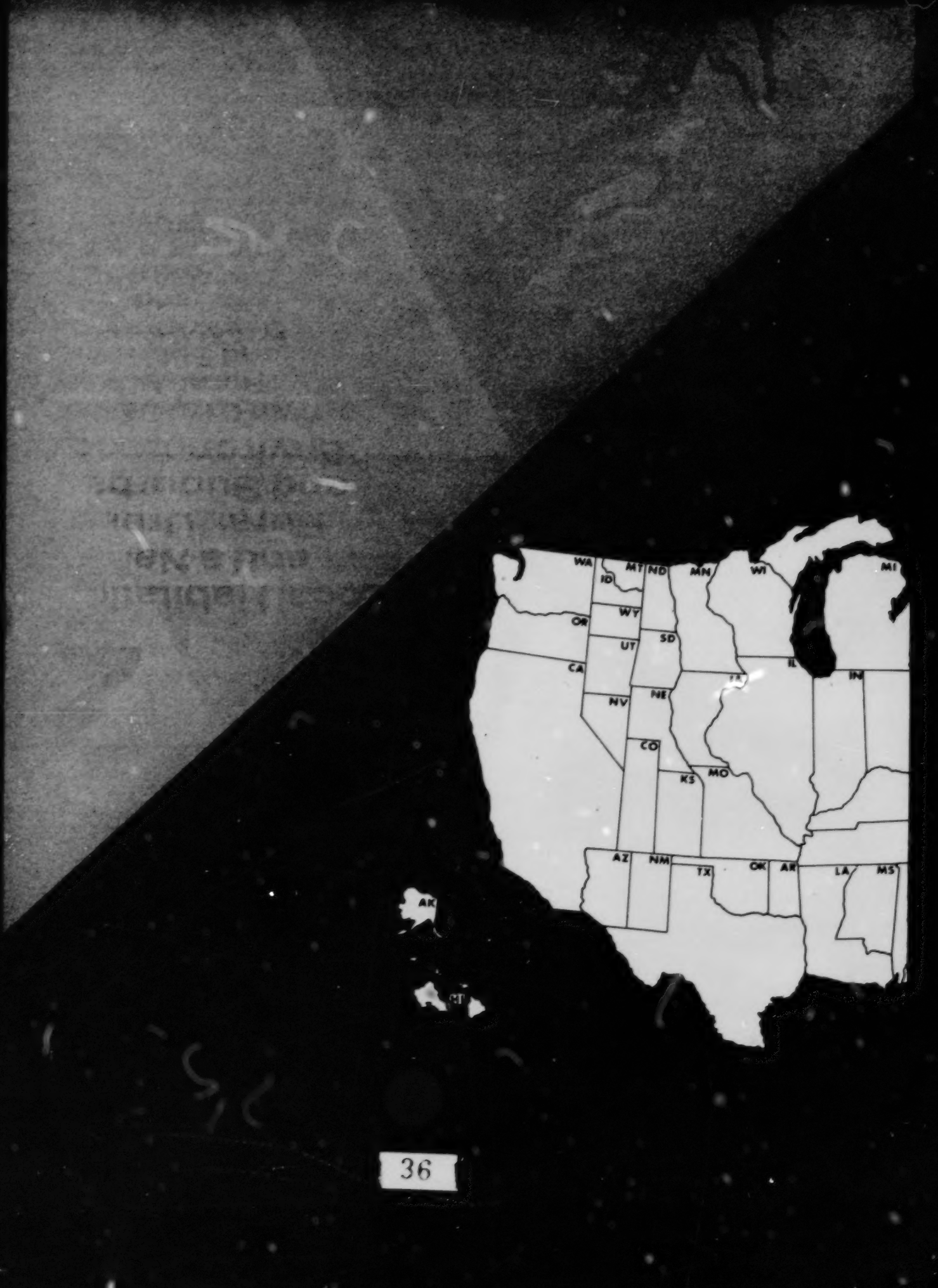
3. See Neal R. Pierce, *The Megastates of America*. New York, W. W. Norton & Company, Inc., 1972.

4. Select Committee on Population, U.S. House of Representatives, *Domestic Consequences of United States Population Changes*, Washington, D.C., U.S. Government Printing Office, 1978.

5. Mary Ellen Aynes, "Federal Indian Policy and Labor Statistics—A Review Essay," *MLR*, April 1978, pp. 22-27.

6. Clark C. Abt, *The Social Audit for Management*. New York, AMACOM, 1977.

7. Scott C. Brown, "Educational Attainment of Workers—Some Trends 1975 to 1979," *MLR*, February 1979, pp. 54-59.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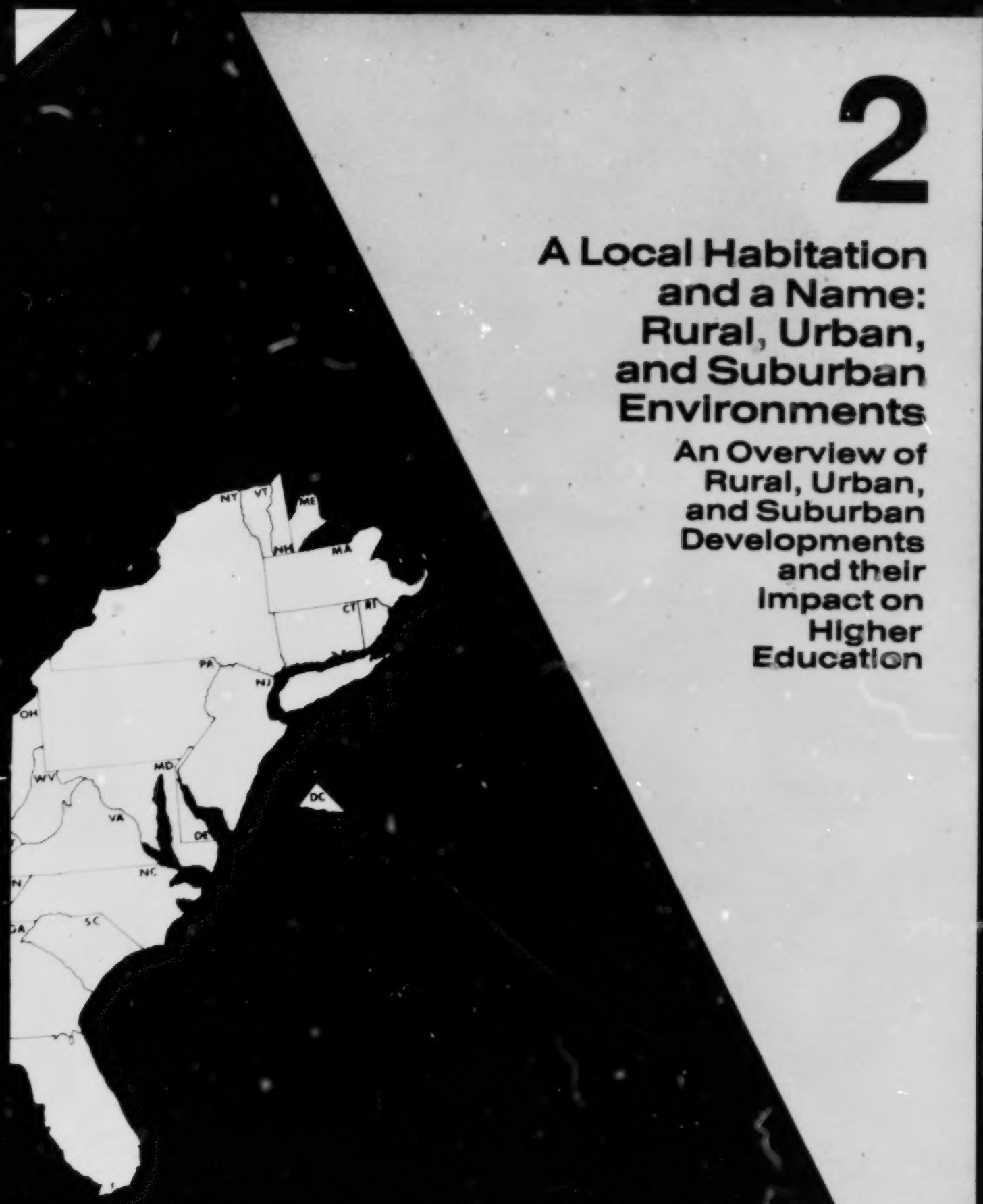
2

A Local Habitation and a Name: Rural, Urban, and Suburban Environments

An Overview of Rural, Urban, and Suburban Developments and their Impact on Higher Education



A Local Habitation and a Name: Rural, Urban, and Suburban Environments

An Overview of Rural, Urban, and Suburban Developments and Their Impact on Higher Education

Edwin J. Allen, Jr.

Like the parable of the blind men and the elephant, attempts to describe rural America are confounded by both its nature and its dimensions.

Just as the blind man holding the elephant's trunk thought that the whole animal must be very much like a snake, while the other blind man, feeling its leg, thought elephants closely resembled trees, so too, distorted images of rural America have grown from vivid descriptions of small segments of it. For example, one popular image of rural America is that of an agglomeration of farmers and farm workers. Yet, as of 1975 over 80 percent of America's rural population neither lived nor worked on farms.[1]

Urban areas are no less diverse. For example, 20% of U.S. farmers reside within Standard Metropolitan Statistical Areas (SMSAs). The harder we try, it seems, the harder it is to delineate consistent differences between rural and urban places. Yet there must be differences if for no other reason than the fact that urban designed programs have failed in rural areas. Measures of these programs testify that:

1. There are nearly three times as as many rural housing units lacking complete plumbing as urban units.
2. While rural rental units account for only 26% of the occupied units, they constitute 55% of the deficient, overcrowded, and "excessive cost" rural housing.
3. A comparison of median terms for first mortgages on single family homes shows than nonmetro areas have a 0.9% higher interest rate, 3.1 years shorter term to maturity and $8,100 lower loan amount and a 0.5% higher down payment.
4. In 1976, only 2% of HUD mortgage insurance was written in rural areas.[2]

Our present purpose is twofold: to examine how and what we know about the distinctions between urban and rural, and to suggest some implications of the distinctions for colleges and universities concerning their own institutional development and change.

Such implications have not heretofore been without paradoxes. To take one current and celebrated example, the University of California is defendant in a lawsuit which contends that University research and development of tomato harvesting machines has displaced some 32,000 workers. The suit further contends that many thousands more have been replaced by other university developed machinery in orchards and vegetable fields. The legal point at stake is the federal land grant college requirement that the institution "promote the maintenance of maximum employment and the improvement of the rural home and rural life." Plaintiff maintains that currently this dilemma is not being adequately resolved either by retraining the displaced workers or by providing other services which might allow replacement of what the machines have taken.

Land grant institutions and other rural colleges in all predominantly rural states face similar conflicts of mission. Clarification of such conflicts may for many be a prerequisite for campus tranquility, if not survival.

Focus for the role of colleges and universities in the resolution of many rural and urban problems is provided by many national and regional associations. A recent statement on the role of the urban university in implementing the President's national urban policy contains some useful observations:[3]

> The presence of a university can be crucial to the stability of a city. This has been especially important in the physical upgrading of decaying central cities and neighborhoods. One need only examine the role of the University of Chicago in Hyde Park area, the University of Pennsylvania in the West Philadelphia area, and the University of Southern California in the Watts area, as well as Boston University's participation in the Fenway and Kenmore Square plans, to grasp the critical role of universities in upgrading neighborhoods.
>
> Urban universities are a significant economic resource to cities in which they are located. The eight universities in the Greater Boston area, for example, make expenditures of $1 billion annually. In St. Louis, combined employment in the Washington University and Saint Louis University medical centers alone constitutes the largest nongovernmental source of employment in the city.
>
> Urban universities provide essential assistance to business firms in the city. University research and development has led to the spawning of new industries; MIT alone has spun off nearly 200 such firms. New York University's School of Business has a student-run urban business development center which provides technical assistance by students in minority-owned enterprises in the city.
>
> Urban universities are major deliverers of vital services to the disadvantaged living in central cities. The Medical Schools of the Universities of Chicago, Miami, Southern California, Texas, Michigan, and Washington (Seattle), to choose a few of many examples, provide free or low cost clinical services to low-income residents. Most law schools of urban universities provide legal services in public defender and public prosecutor programs, while their schools of social work encourage students to participate in internships in municipal social service agencies, thus providing service "back-up" help to cities at no cost.
>
> The universities in Cleveland Circle (Case Western Reserve and Cleveland State) have pooled their institutional resources to provide neighborhood street lighting and security, and are working with the City Planning Board on overall neighborhood improvement projects. In the job training area, New York University has created

Excerpted from *Education in Rural America* edited by Jonathan Sher (c) Westview Press, 1977, Boulder Colorado. Reprinted by Permission.

several prototype programs to train the "hard to employ" for productive positions in the public/private sectors.

Urban universities are deeply involved in the enrichment of public elementary and secondary schools via extensive practice teaching programs and the direct and continuing education of school principals and administrators. For example, Saint Louis University's Department of Education operates a unique community school experiment in conjunction with the St. Louis public school system in one of the city's most disadvantaged and deteriorated neighborhoods.

The facilities of a university are frequently utilized by community-based organizations and groups and thus provide a center of activity in which city residents can take part in projects of community interest. Urban universities will increasingly make their facilities available for fulfilling the myriad of community-rebuilding tasks described in the President's message.

The urban university is an important force in building a more informed citizenry which is essential in making the critical choices needed for urban revitalization. Boston University, for example, operates an "ad lab" in which students of the School of Public Communication take on as projects public service advertising campaigns for non-profit organizations.

Many of these observations are applicable to rural areas as well. But greater focus on the differences between rural and urban policy is provided by the Congressional Rural Caucus.[4] Materials prepared by the Caucus on education and manpower development present a wide range of policy implications relevant to colleges and universities. The recommendations are included in a summary of the *1978 Congressional Rural Caucus Report on Rural America*. The *Report* urges the President to support a National Rural Development Policy. Some of the specific recommendations relevant to colleges and universities are:

Curriculum and Continuing Education

Develop educational curricula for rural development professional and paraprofessional career programs at the college and university level with accredited undergraduate and graduate degrees, especially in colleges and universities in or adjacent to rural areas.

Consider the use of private television in rural schools but do not lose the value of the human factor in such programs. (NIE program in Alaska is worthy of special evaluation.)

Encourage appropriate industry organizations and representatives to publish a layman's Agricultural Encyclopedia, to include a comprehensive overall presentation on agricultural production, farming, livestock, dairy, poultry, and related activities, and to be directed especially to young people and the consumer.

Ensure that the School Library Program allocate in accordance with the specified student/total student population ratio formula the rightful portion of their $167.5 million budget to non-metro school libraries. (Amendment to P.L. 94-482.)

Develop a program to explain to consumers the price differential between the farm producer and the consumer, to bring about a more effective and objective understanding of the mutual problems in the cycle involving production, processing, transporting, and wholesale and retail marketing.

Rural Development

Develop a national policy for rural education, human resources development, and vocational education, including R&D, special training, etc.

Conduct a comprehensive study to identify the broad range of problems that small communities and towns face in providing their residents with the minimum level of essential community facilities and services.

Initiate research and development to solve rural water supply, rural sewage and solid waste management, housing, and industrialization problems, as directed by Section 603(b) of the Rural Development Act of 1972.

Identify and collect data on rural education and human resource development needs and review ongoing programs for possible urban bias, especially CETA.

Develop innovative programs to educate local people, as well as USDA and other Federal workers, in rural development.

Provide for improvement of local government management and institutions which affect development. Provide training for local officials.

Determine the effectiveness of the involvement of the Regional Rural Development Centers and selected Land Grant Colleges and Universities in rural reduction programs.

Use the National Teacher Corps program to train teachers for rural schools, to provide long-term pay supplements for working in rural schools, and to provide additional in-service training to rural teachers.

Funding and Economic Research

Reevaluate the needs for capital funding for education facilities in rural areas to determine the potential and the requirements for local improvements.

Determine the economic and social impact of the continuing decrease in the number of farms and the increase in the average size of farms.

Evaluate revising the Title I aid formula to provide more federal funds to schools with the highest percentage concentration of pupils from poverty level families.

Identify and analyze the conditions necessary for a small farm to develop into a more productive venture and apply the findings in an action program. (Refer to Alabama's Tuskegee Institute.)

Encourage states to stimulate increased teacher salaries in rural areas, to attract more qualified teachers to these areas, and to keep those who are so qualified.

Avoid any new federal mandates for state school finance equalization and support maintaining of the traditional respective roles of the Congress and the states in school financing programs.

A principal concern of the Caucus and other rural organizations has been the general inability to coordinate and fund an overall rural policy. This has not been true for urban areas. One result of the neglect has been a tendency to extend urban definitions of social problems into rural areas. Given the nature of differences due to scale, the extension has generally resulted in underfunding and inappropriate funding of rural programs.

Such funding rests on population based definitions of what is rural (as opposed to socio-economic, cultural, or ecological definitions). Throughout the world, rural is defined by default—rural is what is left over after determination of what is urban. This "how're you gonna keep 'em down on the farm" approach generates at least five definitions of rural: 1) rural nonmetropolitan — "all farms, open countryside and places of less than 2,500 residents outside of SMSAs"; 2) expanded rural nonmetropolitan — "all farms, open countryside and places less than 10,000 residents outside SMSAs"; 3) census rural — "all farms, open countryside and places of less than 2,500 residents, both within and outside of SMSAs"; 4) nonmetropolitan — "all farms, open countryside and places of less than 50,000 residents outside of SMSAs"; and 5) combination rural — "census rural plus all nonmetropolitan places between 2,500 and 10,000."

The first definition is the most restrictive, and the last is the least. Note that the keystone of all definitions is the SMSA. The differentiating variables are size (2,500, 10,000 and 50,000 limits) and inclusion or exclusion from SMSAs.

The following table illustrates the results of using the various definitions of total rural population:

Depending on which definition is used, one-fifth to one-third of the total U.S. population is rural. The older census definition of rural (3) is increasingly being replaced by nonmetropolitan (4) for analytic purposes. Map 1 is a detailed presentation of the distinction between metropolitan and nonmetropolitan. SMSAs are metropolitan; the rest is nonmetropolitan. By this grouping parts of Death Valley and Brooklyn are in the same classification. So are Iowa City (48,000) and Plains (700).

The analytical crudity of the metropolitan-nonmetropolitan distinction suggests to many analysts that prospective censuses should more often take into account the popular trichotomy of urban, suburban, and rural. From this perspective a town of 50,000 probably would not be considered rural while one of 2,500 would. The "combination rural" definition (5) probably suits this trichotomy best. At present, however, the definition is rarely used analytically. A detailed account of the commonly used census distinctions are given in the Appendix.

TABLE I
Total Rural Population Using Alternative Definitions

Definition	In (Millions)	1970 % of Total U.S. Population
1	37.5	18.5
2	49.4	24.9
3	53.9	26.5
4	63.8	31.4
5	65.1	32.0

Urban and Rural Population Change

The urban, suburban, rural distinction is currently represented in census figures by the designations "metropolitan" (central cities and suburban) and "nonmetropolitan" (places less than 50,000, by definition outside of SMSAs). Central cities are most often the namesakes of SMSAs; the rest of the SMSA is suburban ("outside of central cities"). Needless to say, Bakersfield is not the same sort of central city as Manhattan, and many suburban areas are cities and towns, not bedroom communities.

Nonetheless, the three-part distinction does give glimpses of general population changes. The following table illustrates shifts over the past thirty years.

During the thirty-year period the percentage of metropolitan population residing in central cities declined from 58 to 41. Three-fifths of the metropolitan population is now suburban.

The distribution by age of the metropolitan population also reveals significant changes between 1970 and 1977. Table III presents the distribution of this population by age and also gives percentage change within age groups for the period 1970-77.

TABLE II
Metropolitan/Nonmetropolitan Population Distribution, 1950-1977 (in thousands)*

	Central Cities	Suburban	Nonmetropolitan
1977 #	59,993	83,114	69,459
%	28	39	33
1970 #	62,876	74,182	62,761
%	31	37	31
1960 #	58,004	54,881	66,300
%	32	31	37
1950 #	49,413	35,088	67,183
%	33	23	44

*U.S. Census Bureau, Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 19[illegible] Current Population Reports, Special Studies, P-23, No. 75.

Overall, central cities lost 4.6% of population between 1970 and 1977, while suburban areas gained 12%. Most of the growth in both areas took place among the 18-34 year cohorts and most of the loss in both occurred among those under 14. Cities have proportionately more of the very old and proportionately fewer of the very young.

TABLE III
Population by Age for Central Cities and Suburban Areas, 1977 and 1970. Percentage Distribution (Column Totals)*

(Numbers in thousands. 1970 metropolitan area definition)

Age	Central cities		Suburban areas		Percent change, 1970 to 1977	
	1977	1970	1977	1970	Central cities	Suburban areas
Total	59,993	62,876	83,114	74,182	– 4.6	12.0
Under 14 years	21	25	23	28	– 20.0	– 10.1
15 to 17 years	7	7	8	8	– 5.2	10.1
18 to 24 years	14	12	13	10	6.7	37.8
25 to 34 years	16	12	16	13	19.2	37.9
35 to 44 years	10	11	12	12	– 12.4	6.4
45 to 64 years	21	21	20	20	– 6.5	13.7
65 years and over	11	11	8	8	3.0	22.8

*U.S. Census Bureau, Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 1970. Current Population Reports, Special Studies P-23, No. 75.

Geographical Mobility

People in their twenties are more likely to change residence than any other age group. Between 1975 and 1978, 63% of persons 25-29 years old (in 1978) and 59% of those 20-24 years old had moved. The rate for the total population over 2 years old was 34%. The older the children in a family, the less likely is a move (53% for 3 and 4 year olds, 41% for 5 to 9 year olds). These figures suggest that postsecondary education planning should carefully interpret migration statistics. For example, less than 20% of the 55 and above cohort moved between 1975 and 1978 (55-64: 17%; 65-74: 15%; 75 and over: 12%). This information is not useful to city planners in Phoenix and central Florida. Similarly, migration of college-aged students, although nationally low, may be high in some areas. We cannot automatically assume, however, that where growth due to migration is high, the college aged population is also growing.

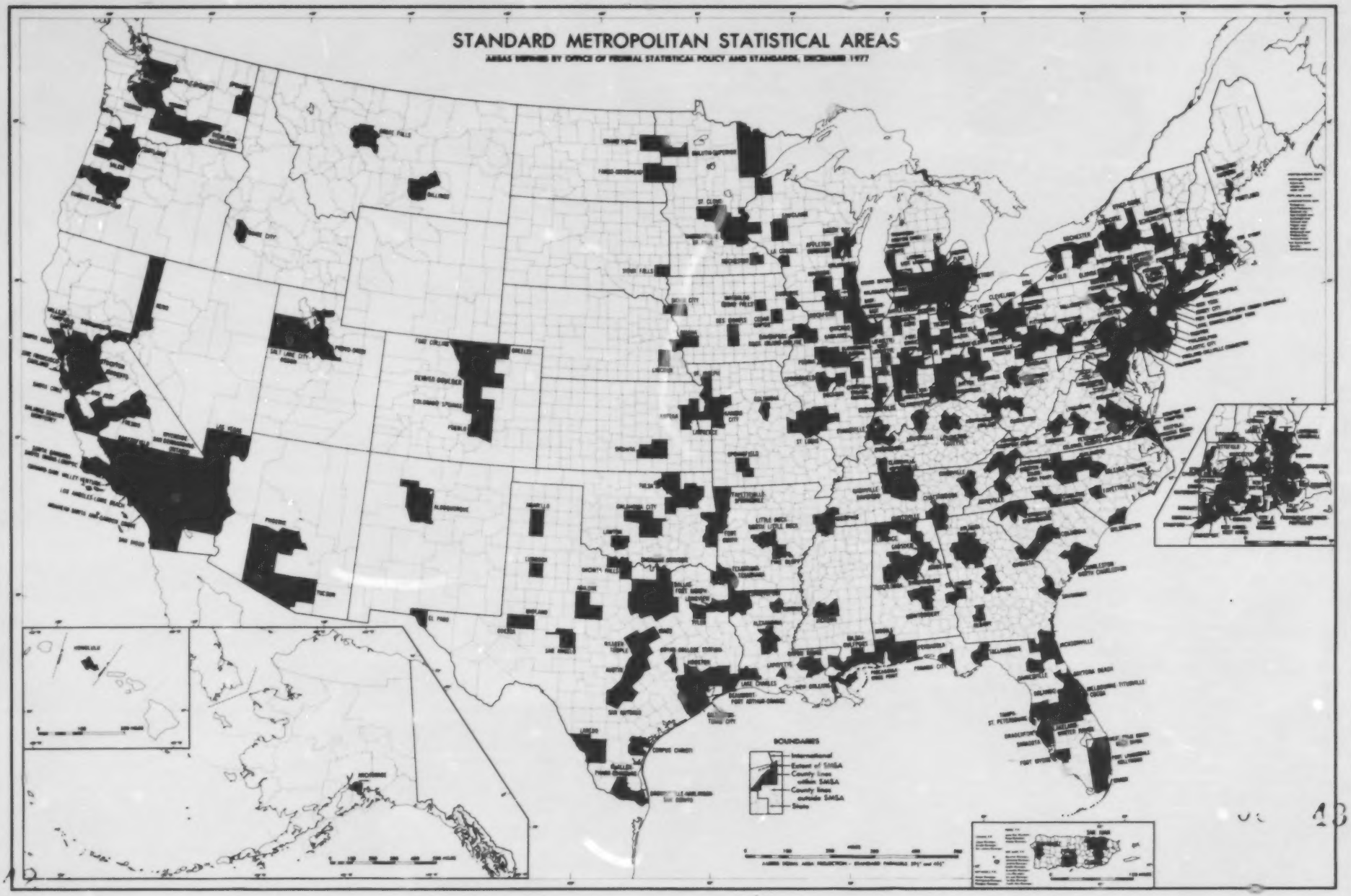
Map 2 illustrates the regional flow of persons. In none of the four census regions do metropolitan areas have net immigration from nonmetropolitan territory. For each of the same four regions, central cities had net outmigration in the three-year period. Much has been made lately of an outmigration to rural areas. Table IV presents the data in more detail.

TABLE IV
Change in Population of Nonmetropolitan Counties, by Size of Largest Place in County: 1977 and 1970*
(Numbers in thousands. 1970 metropolitan area definition.)

Size of largest place	1977	1970	Numerical change 1970 to 1977	Percent change 1970 to 1977	Percent distribution	
					1977	1970
Total, nonmetropolitan	69,459	62,761	6,698	10.7	100.0	100.0
In counties with:						
A place of 25,000 or more	17,547	15,845	1,702	10.7	25.3	25.2
A place of 2,500 to 24,999	43,331	39,725	3,606	9.1	62.4	63.3
No place of 2,500 or more	8,582	7,191	1,391	19.3	12.4	11.5
In counties designated metropolitan since 1970	9,980	8,373	1,607	19.2	14.4	13.3
Other nonmetropolitan counties	59,479	54,388	5,091	9.4	85.6	86.7

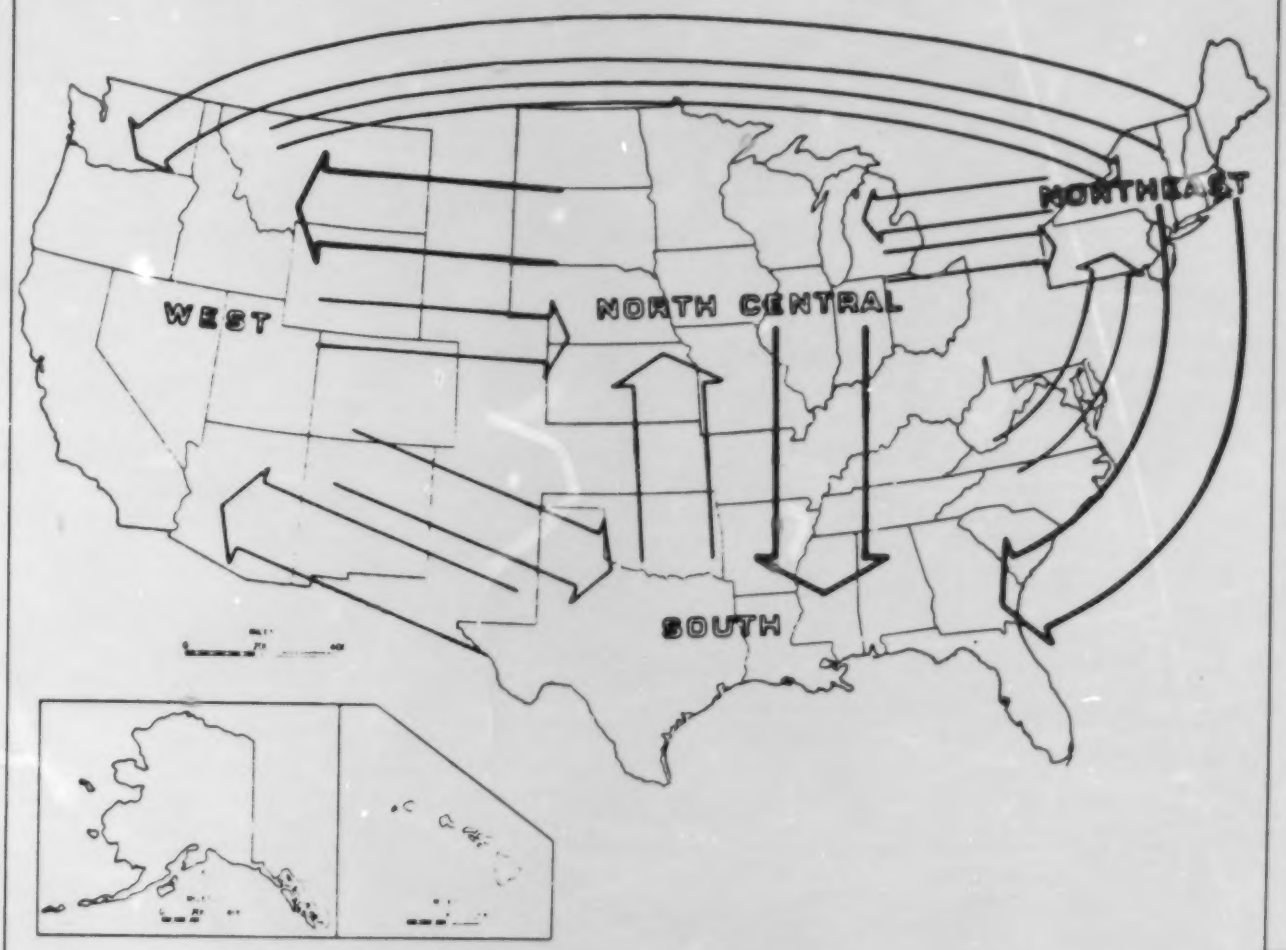
*U.S. Census Bureau, Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population. Current Population Reports, P-23, No. 75.

MAP 1


STANDARD METROPOLITAN STATISTICAL AREAS
AREAS DEFINED BY OFFICE OF FEDERAL STATISTICAL POLICY AND STANDARDS, DECEMBER 1977
BOUNDARIES
International
Extent of SMSA
County lines within SMSA
County lines outside SMSA
State

MAP 2

Region to Region Migration Flows for the United States: March 1975 to March 1977*



*U.S. Census Bureau, Geographical Mobility: March 1975 to March 1977. Current Population Reports, Series P-20, No. 320.

Note that the two largest percentage increases are in counties designated metropolitan since 1970 and in counties with no place of more than 2,500 people. That is, the largest population growth rates have occurred in areas which are actually suburban, not rural, and in the most rural counties.

The overall rural rate, however, has been great. Table V gives percentage changes over three decades.

The greatest slowdown in rate is suburban and the greatest growth is nonmetropolitan (actually the non-metropolitan rate is about 1.4% lower because of counties designated metropolitan since 1970). This table and Table IV suggest that the deconcentration of population, long apparent in metropolitan areas, may now extend to nonmetropolitan areas as well.

TABLE V
Rates of Population Change in Metropolitan and Nonmetropolitan Areas, 1950-1977*

	Central Cities	Suburban	Nonmetropolitan
1970-77	– 4.6	12.0	10.7
1960-70	8.4	35.2	– 5.3
1950-60	19.4	56.4	– 1.3

*U.S. Census Bureau, Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 1970. Current Population Reports, Special Studies P-23, No. 75.

Farms and the Rural Population

Nonmetropolitan areas are becoming less farm oriented, even for those persons who live on farms. Table VI illustrates the distribution of farms in the United States.[6]

Fully 19% of the U.S. farm population lives within SMSAs. But only 9% of the nonmetropolitan population lives on farms. Whatever other paradoxes we can find in the stereotypic views of rural and urban, a few clear trends in the farm population and farm workers stand out.
First, the decrease in both absolute numbers and percentage of total population is shown.

The labor force participation rate of this dwindling population is about the same as that of nonfarm residents,

TABLE VI
Metropolitan and Nonmetropolitan Residence of Farm and Nonfarm Population, 1977* (in thousands)

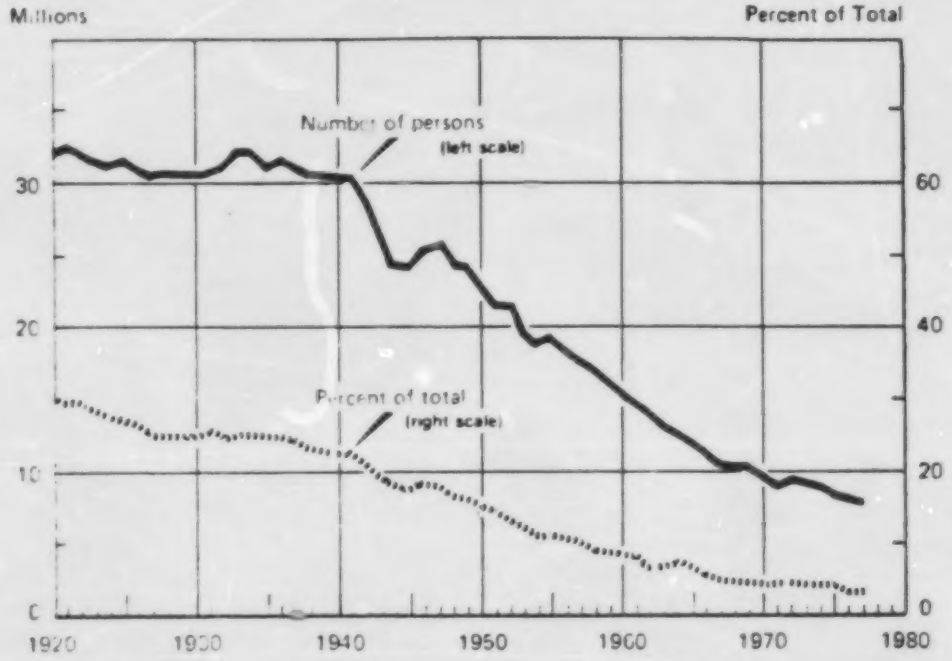
	Total	Farm	Nonfarm
Inside SMSA	143,182[1]	1501	141,681
Outside SMSA	68,610[1]	6305	62,305

*U.S. Census Bureau, Farm Population of the United States: 1977. Current Population Reports, Series P-27, No. 51. [1]These figures differ from sums in Table II because this table refers to the civilian noninstitutional population while Table II refers to total population.

about 60%. Farm resident men, however, have a higher rate than nonfarm men (80 as opposed to 75) while farm women have a lower rate (41 as opposed to 47).

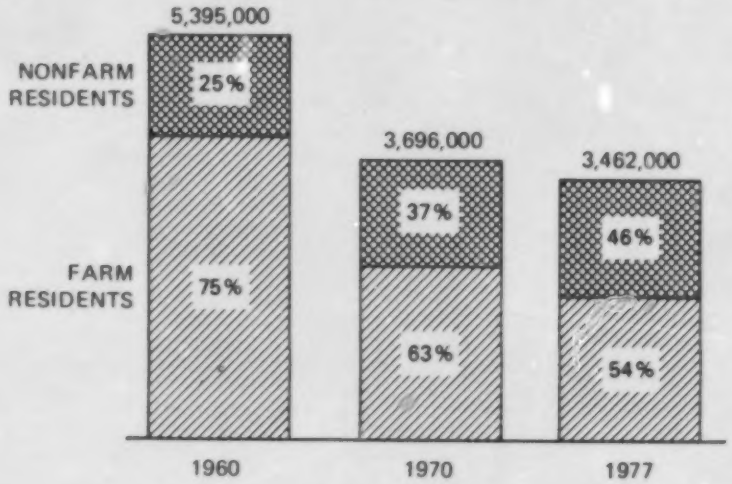
Labor force participation rates are deceptive in many ways. Included in the farm rate are unpaid family workers. Even with this inclusion only 41% of women are listed as in the labor force (up from 30% in 1960).[7] Given the skills of farm women (from bookkeeping and accounting to cottage industry), labor force rates may be extremely limited in what they tell us about use of time and levels of

Figure 1. Farm Population, 1920 to 1977*



*U.S. Census Bureau, Farm Population of the United States: 1977. Current Population Reports, Series P-27, No. 51.

Figure 2.
Residence of Persons Employed in Agriculture: 1960, 1970, and 1977*



USDA

*U.S. Census Bureau, Farm Population of the United States: 1977, Current Population Reports, Series P-27, No. 51.

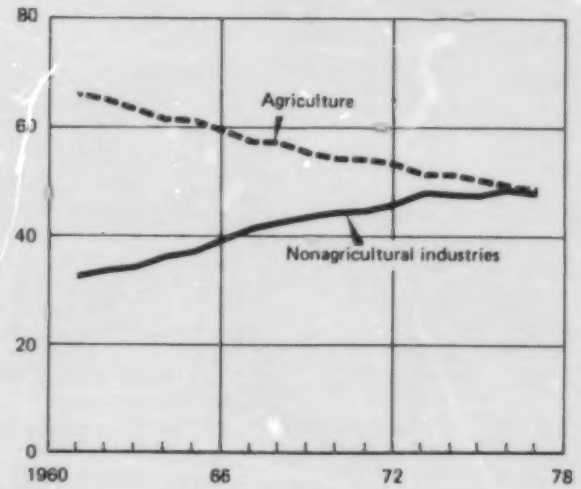
productive work. We do know, however, that level of education is positively correlated with rural female decisions to enter the labor force.

But farm residents do not represent the total potential agricultural work force. Many farm workers do not themselves live on farms, and their number is increasing.

Not only are persons employed in agriculture more unlikely to be farm residents than ten years ago, farm residents are increasingly more likely to be employed off the farm.

Between 1970 and 1977, the employed farm resident labor force engaged solely or primarily in agriculture dropped from 2.3 to 1.9 million persons. During this same period the farm resident nonagricultural labor force stayed about the same. This distribution between agricultural and nonagricultural industries is true for both Black and White farm residents. Regional variations, however, do arise. The proportion of farm residents engaged in nonagricultural activities in the South is higher than that for the rest of the country, 55% as opposed to 45%.

Figure 3.
Farm Residents Employed in Agriculture and Nonagricultural Industries: 1961 to 1977



*U.S. Census Bureau, Farm Population of the United States: 1977, Current Population Reports, Series P-27, No. 51.

Racial Differences

The largest *percentage* changes in rural/urban population distribution in this decade lie in Blacks leaving farms and entering suburban areas. The following table illustrates the numbers involved.

A more than 53% drop in farm Blacks occurred between 1970 and 1977. Most of this reduction is probably attributable to the historically high rates of population loss among tenant farmers, principally in cotton and tobacco. Black farm operators also tend to be older than White. In the 1974 census of agriculture, 53% of Blacks were older than 55, while only 43% of Whites were.

White farm population loss during the period amounted to 1.4 million or 16%. The white farm population stands at 94% of total, while Blacks account for 5%.

The high rate of Black suburban increase must be interpreted with caution. For example, some central cities are experiencing a net loss of Blacks and a net increase of Whites. Less expensive Black suburbs sprout in the fringes of such cities. Black migration to suburbs, therefore, does not necessarily result in increased integration.

TABLE VII
Rural and Urban Distribution of Population By Race: 1970-77.* (In thousands)

		Central Cities	Suburban	Nonmetropolitan	Farm[1]
White	1970	48,909	70,029	56,338	8,775
	1977	44,951	77,226	62,158	7,349
Black	1970	12,909	3,433	5,714	849
	1977	13,451	4,596	6,427	397

*U.S. Census Bureau, Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 1970. Current Population Reports, Special Studies P-23, No. 75; U.S. Census Bureau, Farm Population of the United States: 1977, Current Population Reports P. 27, No. 51.

[1]Farm population is a subset of the combined total of the other three categories. Most farmers are nonmetropolitan, but some are even in central cities. In 1950, the last year for which data were so aggregated, 283,000 urban persons were engaged in farming. That figure represented 0.3% of the total urban population, or 1.2% of the total farm population.

The Spanish origin farm population (112,000) accounts for 1% of all Spanish origin people in the U.S.[8] Some 0.2% are farm owners and managers. Many more (4.4%) are farm laborers, and most of these are of Mexican origin. The Spanish origin population is distributed two-thirds metropolitan and one-third nonmetropolitan. Most (61%) work as craft workers, operatives, or service workers.

Family Structure

In 1978 there were about 57 million families in the United States. About 83% of all families were maintained jointly by a husband and wife, 3% by a man with no wife present, and 14% by a woman with no husband present. The following table gives rural/urban detail on this distribution.

Of the 57 million primary families 27% were located in central cities, 39% in suburban areas, 34% in nonmetropolitan territory, and 4% on farms.

White families accounted for 88% of the total, 92% of married couples, 80% of families maintained by a man, and 71% of families maintained by a woman.

About 75% of all households (76 million) in 1978 consisted of primary families. The balance was composed of non-related individuals living together or one person households. In 1970, 81% of all households were primary families, in 1960, 85% and in 1950, 89%. There has, therefore, been a very clear cut and regular trend in the past 30 years away from the family as the ever present form of adult living arrangements. Part of this decline is related to the age structure of the population. Nonetheless, between 1970 and 1977 the proportion of households maintained by a married couple declined from 70% to 62%.

Furthermore, it appears that more adults are deferring marriage. In 1970, 54.7% of all persons 20-24 years old had never married; in 1978 the figure was 65.8%. Of those 25-29

TABLE VIII
Percentage Distribution of Primary Family Types: 1978*

	Central Cities	Suburban	Nonmetro	Farm[1]
Married couple	74.8	86.0	85.5	92.4
Man, no wife present	3.5	2.4	2.6	3.8
Woman, no husband present	21.9	11.6	11.7	3.8

*U.S. Census Bureau, Households and Families by Type, March 1978. Current Population Reports, Series P-20, No. 327; U.S. Census Bureau, Farm Population of the United States, 1977. Current Population Reports, Series P-27, No. 51. Farm data are for 1977.

years old, 19.1% had never married; in 1970, 27.8% in 1978.

A large part of the increase in household maintained by unmarried persons, therefore, can be ascribed to the increase in size of the 20-35 year cohort coupled with this age group's deferral of marriage to later years. Whether the deferral finally results in fewer married adults overall remains to be seen.

Already the child oriented image of even the suburbs is blurred. The high proportion of suburban families with no children under 18 living at home (43%) is only slightly lower than that of central cities (46%). Farm families are somewhat higher (53%) due primarily to the high median age of the farm population.

Table IX presents the age distribution in greater detail. In 1977, 40% of all those under 14 years lived in suburban areas, 27% in central cities, and 34% in nonmetropolitan areas. Compared to 1970 these distributions are slightly down in central cities and slightly up in the other two areas.

Central cities lost population relative to other places in all age groups with the greatest losses occurring among people over 35. The farm population also lost persons in all groups with the greatest relative loss among the very young and the very old.

In sum, central cities and farms are loosing population in all age groups, but especially senior citizens. Losses are smallest in cities among the young work force and on farms among the 25-44 age group. Suburban and nonfarm nonmetropolitan areas are gaining population in all age groups. Suburban growth is about double that for nonmetropolitan areas in all age groups except the very young and the 35-44 cohort where nearly the reverse is true.

TABLE IX
Age Distribution by Place of Residence, 1970-77*

	Vertical Percentage		Horizontal Percentage							
	1977	1970	Central Cities		Suburban		Nonmetro		Farm[1]	
			1977	1970	1977	1970	1977	1970	1977	1970
	Total #									
	212,566,000	199,819,000								
%	100	100								
Under 14	22	27	27	29	40	39	34	32	3.3	4.6
14-24	21	19	29	32	39	36	32	31	3.6	4.8
25-34	15	12	29	32	41	39	30	29	2.3	3.1
35-44	11	11	26	30	43	41	32	29	3.9	4.7
45-64	20	21	29	33	39	36	32	31	4.8	5.9
65 & over	10	10	31	35	32	30	37	36	4.3	5.8

*U.S. Census Bureau, Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 1970. Current Population Reports, Special Studies, P-23, No. 75. U.S. Census Bureau, Farm Population of the United States: 1977. Current Population Reports. Series P-27, No. 51.

[1]Farm is a subset of the other three categories combined.

Summary and Conclusions

At least three major conclusions of direct relevance to postsecondary education follow from this discussion.

First is the deconcentration of the U.S. population. Central cities have lost population; suburban and rural areas have gained. An important driving force of the filling in of the American green is economic. People cannot afford central cities. Even traditional occupants, Blacks, are involved in the outmigration — some rich enough to escape the rigors of tenancy, but most not rich enough to buy in their old neighborhoods.

A corollary of this demand for lower cost suburban and rural housing is an increase in conflicts between the suburbanite and his rural, even farm, neighbor. Such conflicts take noisome forms which have serious cumulative effects on community morale and functioning, but they also become threats to public safety and the economy when, for example, suburban livestock kill farm livestock, and weevil control planes dust asphalt shingle and lawn as well as cotton.

Finally, changes in the structure of families and the increasing proportion of nonfamily households appear to be more than just passing cycles. The current and prospective state of the economy contains little that would suggest otherwise. Fueled by economic woes and a prevalent feeling that in a job there is direction and growth, more young people might be expected to postpone marriage and family. Whatever the outcome of these trends, an increase in numbers of traditional students will not occur until long after the current crises have been forgotten.

Most of the college eligible population is working hard and is spending a lot of time getting there. Getting there will continue to be a problem: physically difficult because of current settlement patterns coupled with fuel shortages and inadequate alternatives, professionally difficult because the academic background required to get from where one is to where one wants to go is not routed well, given an increasingly working student population.

All three conclusions above point to one important consequence for postsecondary institutions. Off campus based programs have come of age. The success of private industry's educational offerings specifically tooled to major concerns of the increasingly older student point in this direction. So do the continuing education programs of professional associations, and especially the community

based offerings of the two year colleges.

But what is a liberal arts college to do? The diversity of a middle aged potential student population makes difficult the retooling of a campus-based institution aimed at a relatively homogeneous student body. Policy issues raised at the beginning of this essay provide a start for the identification of educational problems in local communities. But the retooling will be expensive. For this reason a much broader support in the community is required, support which is more often "soft" than "hard". The students, however, are increasingly not there. There is therefore, a dwindling source of "hard" support. Project development, which is community based and not student based, may be a viable way out.

Some sources of such support lie in local business and industry. Many potential funds for higher education lie in negotiated tuition aid contracts between labor and industry. Only about 5% of such monies are currently utilized. Reasons for nonutilization are complex,[9] but a closer working relationship with local community leaders should increase participation rates. In one case at least, a company has allowed, nay required, employees who took courses at a nearby college to take courses in humanities, not job related subjects.

Another not fully examined source of support lies in third sector training. This non-profit sector of the economy is currently the fastest growing and includes a number of people involved in human services. Such workers should be prime candidates for programs developed at a traditionally self-contained liberal arts college.

We are not here suggesting that higher education should abandon its traditional mission. One important strength of U.S. postsecondary education is its flexibility and diversity, greater than anywhere in the world. But the fact is that institutions have grown faster than their traditional constituencies. To say in business, therefore, clearly requires adaptation to a market which increasingly includes (most?) people who do not see "college" as a way station between early adolescence and gainful employment. Colleges and universities have traditionally been exempt from such market pressures — they have held a unique exemption. A continued committment to this exemption should remain as a guideline for all developments in community based education.

FOOTNOTES

1. One of the best discussions of the problems generated by using urban models in rural areas is this study on *Education in Rural America* edited by Jonathan Sher. Although primarily a study of K-12, the difficulties of funding in rural areas can be generalized to colleges and universities, especially publics.
2. U.S. Department of Housing and Urban Development, *Report of the Task Force on Rural and Nonmetropolitan Areas*, July 1978.
3. "The Role of the Urban University in Implementing President Carter's National Urban Policy." Conference of Urban Universities, July 13, 1978, Washington, D.C. This conference sought to delineate the policy implications of the White House Policy Report: *A New Partnership to Conserve America's Communities, A Status Report on the President's Urban Policy*, June 1978.
4. "Recommendations in the CRC Report on Rural America Categorized for Assessment Purposes." Office of Policy Management, Farmers Home Administration, U.S. Department of Agriculture, July 13, 1978.
5. Sher, *op. cit.*, p. 378.
6. Census definitions of farm are:

   In the Current Population Survey, as in the 1960 and 1970 Censuses of Population, the farm population consists of all persons living in rural territory on places of 10 or more acres if as much as $50 worth of agricultural products were sold from the place in the reporting year (for the CPS the preceding 12 months). It also includes those living on places of under 10 acres if as much as $250 worth of agricultural products were sold from the place in the reporting year. Persons in institutions, summer camps, motels, and tourist camps, and those living on rented places where no land is used for farming, are classified as nonfarm.

   From April 1960 through January 1976, farm residence was determined in the Current Population Survey by the responses to two questions. Owners are asked, "Does this place have 10 or more acres?" and renters are asked, "Does the place you rent have 10 or more acres?" If the response is "Yes," the respondent is asked, "During the past 12 months, did sales of crops, livestock, and other farm products from this place amount to $50 or more?" If the acreage response is "No," the inquiry relates to sales of $250 or more.

   Beginning in February 1976, the second question was altered so that after responding either "Yes" or "No" to the acreage inquiry, owners/renters are asked, "During the past 12 months, did sales of crops, livestock, and other farm products from this place amount to?" The respondents are given a choice of four answers: "$1,000 or more," "$250 to $999," "$50 to $249," and "Under $50."

   The question was changed to enable identification of the farm population as defined previously (see above) and as defined under the new farm definition announced by the U.S. Department of Agriculture and the Bureau of the Census in August 1975. Under the new definition, a farm would be identified on the basis of sales alone, and would be defined as any place from which $1,000 or more of agricultural products are sold, or would probably be sold, in the reporting year.
7. "Labor force participation differs significantly for the rural woman," Cris Heaton and Philip Martin, *Monthly Labor Review*, January 1979, pp. 71-73.
8. The probably vast undercounting of the Spanish origin population is well advertised. The figures here represent minima, possibly by a factor of two.
9. Details concerning nonparticipation in tuition aid programs can be found in "Education and Work: A Growing Partnership," *Trends 2000*, Volume I, Number 2, 1978, pp. 16-19.

Appendix

Criteria Followed in Establishing Standard Metropolitan Statistical Areas

A standard metropolitan statistical area always includes a city (cities) of specified population which constitutes the central city and the county (counties) in which it is located. A standard metropolitan statistical area also includes contiguous counties[1] when the economic and social relationships between the central and contiguous counties meet specified criteria of metropolitan character and integration. A standard metropolitan statistical area may cross State lines. In New England, standard metropolitan statistical areas are composed of cities and towns instead of counties.

A standard metropolitan statistical area is generally designated on the basis of population statistics reported in a census conducted by the Bureau of the Census. An area designated on the basis of a census shall not lose its designation except as provided for in criterion 5.

A standard metropolitan statistical area is sometimes designated on the basis of population estimates published by the Bureau of the Census which have been accepted for use in the distribution of Federal benefits. An area designated on the basis of such estimates shall lose its designation, if it does not qualify for designation on the basis of population statistics reported in the next succeeding census conducted by the Bureau of the Census.

Basic Criteria

1. Each standard metropolitan statistical area must include at least:
   (a) One city with 50,000 or more inhabitants, *or*
   (b) A city with at least 25,000 inhabitants, which, together with those contiguous places (incorporated or unincorporated[2]) having population densities of at least 1,000 persons per square mile, has a combined population of 50,000 and constitutes for general economic and social purposes a single community, provided that the county or counties in which the city and contiguous places are located has a total population of at least 75,000.[3]

2. A contiguous county will be included in a standard metropolitan statistical area if:
   (a) At least 75.00% of the resident labor force in the county is in the nonagricultural labor force, *and*
   (b) At least 30.00% of the employed workers living in the county work in the central county or counties of the area.[5]

3. A contiguous county which does not meet the requirements of criterion 2 will be included in a standard metropolitan statistical area if at least 75.00% of the resident labor force is in the nonagricultural labor force and it meets two of the following additional criteria of metropolitan character and one of the following criteria of integration.[5]
   (a) Criteria of metropolitan character
      1. At least 25.00% of the population is urban.
      2. The county had an increase of at least 15.00% in total population during the period covered by the two most recent Censuses of Population.
      3. The county has a population density of at least 50 persons per square mile.
   (b) Criteria of integration
      1. At least 15.00% of the employed workers living in the county work in the central county or counties of the area, *or*
      2. The number of people working in the county who live in the central county or counties of the area is equal to at least 15.00% of the employed workers living in the county, *or*
      3. The sum of the number of workers commuting to and from the central county or counties is equal to 20.00% of the employed workers living in the county.

Area Titles

4. The following guidelines are used for determining titles for standard metropolitan statistical areas:
   (a) The title of the standard metropolitan statistical area always includes the name of the largest city.
   (b) There shall be no more than three city names in the title of any standard metropolitan statistical area. The addition of up to two city names may be made in the area title on the basis of the following:
      1. For those areas where the largest city has a population of 50,000 or more inhabitants (criterion 1(a)), the additional city or cities must have a population equal to one-third or more of that of the largest city and a minimum population of 25,000, provided that the name of each additional city having a population of at least 250,000 will be included in the title.
      2. For those areas where the largest city has a population of at least 25,000 but less than 50,000 (criterion 1(b)), the additional city or cities must have a population equal to one-third or more

of that of the largest city and a minimum population of 15,000.

(c) Area titles which include the names of more than one city shall start with the largest city and list other cities in order of their size according to the most recent census, except that the names of cities qualifying an area as an SMSA under criterion 1(b) shall precede those of any other qualifying city.

(d) In addition to city names, the area titles will contain the name of the State or States included in the area.

Loss of Designation

5. A standard metropolitan statistical area shall lose such designation if it fails to meet the criteria for defining an SMSA as measured by information reported in two successive censuses.

A contiguous county (city or town in New England) included in a standard metropolitan statistical area shall be excluded from that standard metropolitan statistical area if it fails to meet the criteria for inclusion in an SMSA as measured by information reported in two successive censuses.[6]

The names of cities which are included in the title of a standard metropolitan statistical area by the application of criterion 4(b) shall be dropped from the title if they fail to meet criterion 4(b) as measured by information reported in two successive censuses.

The 1970 Census of Population shall be the first census used for the application of this criterion.

Special Provisions New England

In New England, the city and town are administratively more important than the county, and data are compiled locally for such minor civil divisions. Here, towns and cities are the units used in defining standard metropolitan statistical areas. In New England, because smaller units are used, and more restricted areas result, a population density criterion of at least 100 persons per square mile is used as the measure of metropolitan character.

The concept of a *central core* is used to describe the central area in a standard metropolitan statistical area in New England. The central core of a standard metropolitan statistical area in New England shall consist of the central city (cities) of the area and those cities and towns immediately adjacent to it which have a population density of at least 100 persons per square mile and which qualify for inclusion in the standard metropolitan statistical area by virtue of their integration with the central city.[7]

6. A city or town adjacent to a central city (cities) of a standard metropolitan area in New England will be designated a part of the central core of the standard metropolitan statistical area if it has a population density of at least 100 persons per square mile and

(a) at least 15.00% of the employed workers living in the city or town work in the central city (cities) *or* the area, *or*

(b) the number of people working in the city or town who reside in the central city (cities) is equal to at least 15.00% of the employed workers living in the city or town, *or*

(c) the sum of the number of workers commuting to and from the central city or cities is equal to 20.00% of the employed workers living in the city or town.

7. A contiguous city or town in New England will be included in a standard metropolitan statistical area if it has a population density of at least 100 persons per square mile and

(a) at least 15.00% of the employed workers living in the city or town work in the central core of the area, *or*

(b) the number of people working in the city or town who reside in the central core is equal to at least 15.00% of the employed workers living in the city or town, *or*

(c) the sum of the number of workers commuting to and from the central core is equal to 20.00% of the employed workers living in the city or town.

8. Qualifying cities in adjacent counties

(a) If two or more adjacent counties each have a city qualifying under criteria 1(a) or 1(b) and the cities are within 20 miles of each other (city limits to city limits), they will be included in the same area unless there is definite evidence that the two cities are not economically and socially integrated.

(b) If two or more adjacent counties each have a city qualifying under criteria 1(a) or 1(b) and the cities are more than 20 miles from each other (city limits to city limits), they will not be included in the same area unless there is definite evidence that the two cities are economically and socially integrated.

Contiguous County Eligible for Inclusion in More than One SMSA

9. In the application of criteria 2 and 3, a contiguous county (city or town in New England) eligible for inclusion in more than one standard metropolitan statistical area will be included in that standard metropolitan statistical area with which it is most closely integrated as measured by the application of criterion 3(b).

FOOTNOTES

1. A "contiguous" county either adjoins the county or counties containing the largest city in the area, or adjoins an intermediate county integrated with the central county. There is no limit to the number of tiers of outlying metropolitan counties so long as all other criteria are met.
2. Unincorporated places as identified and defined by the U.S. Bureau of the Census.
3. In New England, the cities and towns qualifying for inclusion in a standard metropolitan statistical area must have a total population of at least 75,000.
4. Nonagricultural labor force is defined as those employed in nonagricultural occupations, those experienced unemployed whose last occupation was a nonagricultural occupation, members of the Armed Forces, and new workers.
5. In applying criteria 2 and 3, the central county or counties of the area are defined as:
   (a) The county or counties which contain the urban part of a central city of the standard metropolitan statistical area.
   (b) For areas having central cities qualifying on the basis of criterion 1(b), the county or counties containing the urban part of the city of 25,000 and the contiguous places which together with the city constitute the community of 50,000.
   (c) In a standard metropolitan statistical area of 250,000 or more, a county containing
      (1) A city of at least 50,000 which has a contiguous boundary with a central city (cities) of the standard metropolitan statistical area, *and*
      (2) A population which is at least 60.00% urban and has nonagricultural employment of at least 50,000.

   A city whose name is included in the title of a standard metropolitan statistical area is a central city.

   The "urban part" of a central city means that part of a central city identified as "urban" by the Bureau of the Census.
6. The provisions of criterion 5 shall not apply in cases which (1) the application of criterion 1 or criterion 8 would lead to the designation of a new standard metropolitan statistical area, or (2) the application of criterion 9 would lead to the inclusion of a contiguous county in a different standard metropolitan statistical area.
7. It is recognized that in addition to areas defined along city and town boundaries, there is a need for a county version of New England areas for purposes of metropolitan data comparisons with areas in other regions. In addition, because some statistics are not readily available except at the county level, users must at times generalize the New England areas to county lines in order to use statistics for them. Therefore, a set of metropolitan counties has been designated in New England, on a basis comparable with definitions used in the rest of the country, as a supplement to the primary version of the areas defined along town and city boundaries. These definitions are provided in Part VII.

Appendix A
Area Classifications

USUAL PLACE OF RESIDENCE App-1
URBAN AND RURAL RESIDENCE App-1
Definition App-1
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COUNTIES App-2
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Usual Place of Residence

In accordance with census practice dating back to 1790, each person enumerated in the 1970 census was counted as an inhabitant of his usual place of residence, which is generally construed to mean the place where he lives and sleeps most of the time. This place is not necessarily the same as his legal residence, voting residence, or domicile. In the vast majority of cases, however, the use of these different bases of classification would produce substantially the same statistics although there may be appreciable differences for a few areas.

The implementation of this practice has resulted in the establishing of residence rules for certain categories of persons whose usual place of residence is not immediately clear. Furthermore, this practice means that persons were not always counted as residents of the place where they happened to be found by the census enumerators. Persons without a usual place of residence were, however, counted where they were enumerated. Detailed information on residence rules is given in the 1970 Population Census PC(1)-A reports.

Urban and Rural Residences

Definition.—Urban housing comprises all housing units in urbanized areas and in places of 2,500 inhabitants or more outside urbanized areas. More specifically, urban housing consists of all housing units in (a) places of 2,500 inhabitants or more incorporated as cities, villages, boroughs (except Alaska), and towns (except in the New England States, New York, and Wisconsin), but excluding those housing units in the rural portions of extended cities; (b) unincorporated places of 2,500 inhabitants or more; and (c) other territory, incorporated or unincorporated, included in urbanized areas. Housing units not classified as urban constitute rural housing. Information on the historical development of the urban-rural definition appears in the 1970 Population Census PC(1)-A reports.

Farm-nonfarm residence.[1]—Statistics by farm-nonfarm residence are

given in chapter B of this report. In rural areas, occupied housing units are subdivided into rural-farm housing, which comprises all rural units on farms, and rural-nonfarm housing, which comprises the remaining rural units. Occupied housing units are classified as farm units if they are located on places of 10 or more acres from which sales of farm products amounted to $50 or more in 1969, or on places of less than 10 acres from which sales of farm products amounted to $250 or more in 1969. (See facsimiles of questionnaire items H17 and H18 and instructions on pages App-13 and App-15.) Occupied units in rural territory which do not meet the definition for farm housing are classified as nonfarm. All vacant units in rural areas also are classified as nonfarm.

Extended cities.—Over the 1960-1970 decade there has been an increasing trend toward the extension of city boundaries to include territory essentially rural in character. Examples are city-county consolidations such as the creation of the city of Chesapeake, Virginia from South Norfolk city and Norfolk County and the extension of Oklahoma City, Oklahoma, into five counties. The classification of all the housing in such cities as urban would include in the urban category housing units in areas which are primarily rural in character. In order to separate these units from those in the closely settled portions of such cities, the Bureau of the Census examined patterns of population density and classified a portion or portions of each such city as rural. An extended city contains one or more areas, each of at least 5 square miles in extent and with a population density of less than 100 persons per square mile according to the 1970 census. The area or areas constitute at least 25 percent of the land area of the legal city or total 25 square miles or more.

These cities—designated as extended cities—thus consist of an urban part and a rural part. When an extended city is a central city of a standard metropolitan statistical area, only the urban part is included in the classification "in central cities." In the tables in which places of 100,000 or more are presented separately, the data shown for the extended cities are for the entire city.

Counties

The primary divisions of the States are, in general, termed counties, but in Louisiana these divisions are known as parishes. There are no counties in Alaska. In this State, data are shown for statistical areas which are county equivalents designated as census divisions; they were developed for general statistical purposes through the cooperation of the State and the Census Bureau. In four States (Maryland, Missouri, Nevada, and Virginia), there are one or more cities which are independent of any county organization and thus constitute primary divisions of their States.

Places

Two types of places are recognized in the census reports—incorporated places and unincorporated places, as defined below.

Incorporated places.—These are political units incorporated as cities, boroughs, towns, and villages with the following exceptions: (a) boroughs in Alaska and (b) towns in the New England States, New York, and Wisconsin. Boroughs in Alaska are treated as county subdivisions and may include one or more incorporated places. The towns in the New England States, New York, and Wisconsin are minor civil divisions similar to the townships found in other States and not necessarily thickly settled centers of population such as the cities, boroughs, towns, and villages in other States. Similarly, in New Jersey and Pennsylvania, where some townships possess powers and functions similar to those of incorporated places, the townships are not classified as "incorporated places." Thus, some minor civil divisions which are "incorporated" in one legal sense of the word are not regarded by the Census Bureau as "incorporated places." Without this restriction all of the towns in the New England States, New York, and Wisconsin and the townships in New Jersey and Pennsylvania would have to be counted as incorporated places without any consideration of the nature of population settlement. The densely settled portions of some are recognized as unincorporated places or as part of an urbanized area.

In Hawaii, there are no incorporated places in the sense of a functioning local governmental unit. The State, however, has recognized places and established boundaries for them. Such places are treated as incorporated in the 1970 census.

The 1960 population figure for an incorporated place applies to the area of the place at the time of the 1960 census. Hence, the indicated change in population over the decade reflects the effect of any annexations or detachments. In order to permit an analysis of the relative importance of population growth within the old boundaries and of population added in annexed territory, table 8 for incorporated places of 2,000 inhabitants or more in 1960 has been included in the 1970 Population Census PC(1)-A report for each State. No data are available on detachments from incorporated places.

Unincorporated places.—As in the 1950 and 1960 censuses, the Census Bureau has delineated boundaries for closely settled population centers without corporate limits. Each place so delineated possesses a definite nucleus of residences and has its boundaries drawn to include, if feasible, all the surrounding closely settled area.

Unincorporated places are identified with the letter "U." Unincorporated place boundaries change with changes in the settlement pattern; a place which has the same name in 1970 as in previous decades does not necessarily have the same boundaries. Information on modifications in the delineation of unincorporated places introduced in the 1970 census appears in the 1970 Population Census PC(1)-A reports.

Urbanized Areas

The major objective of the Census Bureau in delineating urbanized areas is to provide a better separation of urban and rural housing in the vicinity of the larger cities. An urbanized area consists of a central city, or cities, and surrounding closely settled territory. The specific criteria for the delineation of an urbanized area are as follows:

1a. A central city of 50,000 inhabitants or more in 1970, in a special census conducted by the Census

Bureau since 1960, or in the 1970 census; or

b. Twin cities, i.e., cities with contiguous boundaries and constituting, for general social and economic purposes, a single community with a combined population of at least 50,000 and with the smaller of the twin cities having a population of at least 15,000.

2. Surrounding closely settled territory, including the following (but excluding the rural portions of extended cities, see "urban and rural residence," above):

a. Incorporated places of 2,500 inhabitants or more.

b. Incorporated places with fewer than 2,500 inhabitants, provided that each has a closely settled area of 100 housing units or more.

c. Small parcels of land normally less than one square mile in area having a population density of 1,000 inhabitants or more per square mile. The areas of large nonresidential tracts devoted to such urban land uses as railroad yards, airports, factories, parks, golf courses, and cemeteries are excluded in computing the population density.

d. Other similar small areas in unincorporated territory with lower population density provided that they serve
—to eliminate enclaves, or
—to close indentations in the urbanized areas of one mile or less across the open end, or
—to link outlying enumeration districts of qualifying density that are not more than 1½ miles from the main body of the urbanized area.

Standard Metropolitan Statistical Areas

The Bureau of the Census recognizes 243 standard metropolitan statistical areas (SMSA's) in the United States and 4 in Puerto Rico, making a total of 247 in the 1970 census. These include the 231 SMSA's as defined and named in the Bureau of the Budget publication, Standard Metropolitan Statistical Areas: 1967, U.S. Government Printing Office, Washington, D.C. 20402. Since 1967, 16 SMSA's have been added, of which 2 were defined in January 1968 and an additional 14 were defined in February 1971 on the basis of the results of the 1970 census. Changes in SMSA boundaries or titles made after February 1971 are not recognized in this series of reports. SMSA's are defined by the Office of Management and Budget (formerly Bureau of the Budget).

Except in the New England States, a standard metropolitan statistical area is a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more, or "twin cities" with a combined population of at least 50,000. In addition to the county, or counties, containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are socially and economically integrated with the central city. In a few SMSA's where portions of counties outside the SMSA as defined in 1967 were annexed to the central city, the population living in those counties is not considered part of the SMSA or the central city. In the New England States, SMSA's consist of towns and cities instead of counties. Each SMSA must include at least one central city, and the complete title of an SMSA identifies the central city or cities. For a detailed description of the criteria used in defining SMSA's, see the Bureau of the Budget publication cited above.

Standard Consolidated Areas

In view of the special importance of the metropolitan complexes around New York and Chicago, the Nation's two largest cities, several contiguous SMSA's and additional counties that do not appear to meet the formal integration criteria but do have strong interrelationships of other kinds have been combined into the New York-Northeastern New Jersey and the Chicago-Northwestern Indiana Standard Consolidated Areas, respectively. The former consists of Middlesex and Somerset Counties in New Jersey and the following SMSA's: New York, Newark, Jersey City, and Paterson-Clifton-Passaic. The latter consists of the following SMSA's: Chicago and Gary-Hammond-East Chicago.

3

The Federal Government and Higher Education

Three Articles on Federal Legislation, Patterns in Federal Funding and the Department of Education

The Federal Government and Higher Education: A Review of the 95th Congress

John W. Crewson

The 95th Congress closed October 15th after a marathon weekend session, ending with a flurry of activity that pushed through many important pieces of education legislation. Some important measures such as the Department of Education Organization Act and lobbying reform failed because of insufficient time and a heavy workload. However, many of these issues will be reintroduced in the 96th Congress. The important point is that many new ideas and initial legislative activity took place in the 95th. Of the legislation that did pass, the accomplishments were impressive, qualitatively as well as quantitatively. Most higher education officials are in agreement that this Congress has been one of the most productive in recent times. Furthermore, this session was unique in the support it received from the Administration. In the Nixon-Ford era, education advocates had to battle for every education dollar. In contrast, the Carter administration authorized a 25% increase in Federal aid to education. Congress has approved many of the Carter initiatives. It is a very encouraging sign that this year the education community has had support and cooperation from both Capitol Hill and the Administration.

This article will examine and review some of the key legislation and initiatives that have come from the 95th. The purpose of the summary will be not only to discuss the well known issues and legislation, but also to analyze some of the lesser known bills and see how they might impact upon higher education. There has been much argument and analysis about tax credits, for example, but not as much is known about other implications for education in the new tax law. Consequently, the intention throughout will be to look at some of the less obvious ramifications of the legislation.

A caveat—it is virtually irresistible to draw conclusions and make value judgements. Many of the conclusions, therefore, are arguable. It is also difficult to come to any comprehensive policy conclusions or directions because officially the only federal policy is *no* federal policy. To speak of *no* federal policy is somewhat naive; the more meaningful issue is the *type* of federal policy and how extensive it actually is. This difficulty in delineating federal policy is compounded by the fact that the legislation to be discussed has just become public law and any kind of assessment of its impact is, at best, speculative.

Department of Education

One method of assessing the directions federal policy is taking is to examine what did not pass. This will illustrate a great deal about the issues in the forefront and explain the rationale of subsequent legislation. Probably the biggest defeat of all was the proposed Department of Education. The arguments are familiar and the political machinations behind the bill are unimportant. But there are some important observations to make. The first thing is that the legislation did not fail because of lack of support but because it simply ran out of time before the Congressional deadline of October 15. It passed the Senate by an impressive margin of 72 to 11. Its fate in the House was more uncertain, but the issue is academic since House opponents successfully managed to stall the bill so it wouldn't reach the floor until adjournment. The second observation concerns the behavior of the higher education associations in the lobbying effort. It is safe to say that their collective silence was deafening on the issue. Few associations, if any, made any kind of public stand on the issue and their position was one of basically waiting and seeing. The strongest lobbying activity was done by AFT (against) and NEA (for) and other specialized interest groups. Regardless of the activity and politics in the 95th, the political climate for a Department of Education will be considerably different in the 96th. Proponents are already at work and the Administration has submitted its own version. Similarly, opponents are girding up for what will probably be quite a battle. There will be less fence sitting by the associations, and the debate will become more heated than before. The bill's force this year has lost a little momentum, and its chances are not quite as favorable. However, at this point, it is still too close to call. Nevertheless, it is clear that the 95th Congress has demonstrated that a separate department of education is an idea that has come of age, at least politically.

For Further Information Write:

United States Senate
Committee on Governmental Affairs
Washington, D. C. 20510

United States House of Representatives
House Government Operations Committee
Washington, D. C. 20510

UPDATE 96th

As was expected, there is a lot of activity with the proposed department of education legislation. The Ribicoff bill (S. 210) has already completed 3 days of hearings before the Senate Governmental Affairs Committee and the bill breezed through on a vote of 15 to 1. It will now be eligible for floor action in April, where equally favorable action is expected. On the House side, Representative Jack Brooks introduced the Administration's bill (H.R. 2444), and it is now before the House Government Operations Committee, where a tough battle is anticipated. Hearings are scheduled to begin March 26. The general feelings on this situation are that the senate bill will probably fail in the House which is much more sympathetic to the President's bill. Because the Senate is obviously more disposed toward their own bill, the President's bill will probably not have a very good chance in this chamber. Consequently, it is expected that there will be a compromise bill reached in a joint committee. Little friction is expected since both bills are similar and agree on the major substantive issues. The final vote is difficult to predict at this point, but due to the fact that things are moving so fast, it appears that chances for final passage are probably better than 50-50.

Tuition Tax Credits

The failure of the controversial tuition tax credits bill is probably a better reflection of congressional attitude toward education. The purpose of tax credits is to ease the financial burden on middle-income parents with children in school by adding credits to their income tax. The issue became not whether these were a legitimate method of subsidizing increasing tuition costs, but whether they were the best way. The arguments against it were many, it would aid upper-income families who really didn't need any relief, it was unconstitutional (at least at the elementary/secondary level), the credit itself was too small (roughly $250.00), the program would be too costly, supporters were merely trying to garner support in the wake of Proposition 13 instead of a genuine financial aid program to education, and basically that it was a bad form of public policy. However, the proposal had some congressional and public support, so passage was at least possible. The end result was that the bill finally got bogged down in argument and opponents successfully had it sent back to committee, a move tantamount to killing it so close to adjournment. Since the free standing bill was defeated, proponents also tried tacking the college credits on the tax reform bill as an amendment. This strategy was undercut when President Carter threatened to veto the entire tax package if the credits were attached. For the time being, tuition tax credits are on the back burner, although they will probably come up again in this year's session.

For Further Information Consult:

United States Senate
Senator Daniel P. Moynihan, New York
1107 Dirksen Senate Office Building
Washington, D. C. 20510

UPDATE 96th

There has been little activity of consequence concerning any new tuition tax credit legislation. In the Senate, Senators Moynihan and Packwood have publicly stated their intentions of reintroducing their tax credit proposal, but have not done so. On the House side, there are now several bills before the House Ways and Means Committee, all of which differ in terms of scope and amount but remain true to the concept of a tax credit. So far, there seems to be no major consensus or enthusiasm for them, and no legislative action has been scheduled.

Lobby Reform

Lobby reform is a piece of potentially important legislation which failed to make it through Congress. Its implications for higher education are not nearly as obvious or extensive as tax credits or the proposed department of education. The intent of the reform was to force disclosure of all names of contributors whose gifts are expended in whole or part for lobbying and to keep a tighter reign on all lobbying organizations. This means that if any postsecondary institutions or associations engage in lobbying intensively, they would be subject to legal regulation and recordkeeping. This compliance might be effective or necessary for private industry with large corporate profits at stake, but higher education, at least in terms of its limited lobbying, is another situation. Officials in higher education feel that since their institutions are bona fide philanthropic organizations they should be exempt from these constraints. The failure of the bill was a positive note for colleges and universities in that this is an important instance when schools retain their status as charitable organizations.

This failure of lobby reform has further importance in that it gives both schools and associations a chance to use their lobbying activities to develop one unified, consistent voice on behalf of higher education. If there was one lesson to be learned from the debates on the department of education, student aid, and other legislative issues affecting education, it is that there is a distinct lack of clear opinion and solidarity among higher education organizations.

For Further Information Consult:

American Council on Education
Office of Governmental Relations
1 Dupont Circle, Suite 800
Washington, D. C. 20036

UPDATE 96th

There are presently four principal bills dealing with lobbying disclosure that have been introduced in the House. The Rodino bill (H.R. 81), which is essentially the bare bones of the stalled bill in last year's Congress, appears to be the forerunner as the vehicle for House lobbying legislation. As it stands, the Administrative Law and Governmental Relations Subcommittee has held five days of hearings on this bill and the others. The next step is the consideration of the bill by the House Judiciary Committee. After it is again doctored up in this Committee, it will go to the floor of the House. It is premature to speculate on the bill because the final House bill will probably be considerably different from what it is now. Regardless of the final form, the outlook for passage in the House looks promising, especially in the light that similar bills have passed in both the 94th and 95th Congresses. The chances of success in the Senate and by the White House are not so sure. The outcome there will be determined by what is included in the final bill.

ESEA — Amendments of 1978

The Elementary and Secondary Education Act of 1965 is perhaps the most significant education legislation in terms of federal policy. In this Act the federal government committed considerable sums of money for various programs in elementary and secondary education. A large proportion of these funds were channelled into the Title I program, which attempted to equalize educational opportunities for disadvantaged children. In the ESEA Amendments of 1978 (P.L. 95-561), most of the programs were authorized for five more years with some revisions.

There were also some new initiatives tucked into this omnibus bill which will have a direct impact upon postsecondary education. One initiative will provide up to $100 million, up $25 million from last year, in FY 79 for the Teacher Centers Program. This increase reflects the interest in the necessary improvement of the teacher's role and teacher training. The Adult Education Act was also amended to provide $210 million in 1979, increasing incrementally to $290 million in 1983 for adult training

projects. This authorization is significant in that it recognizes the increasing importance of adult education. *Special emphasis is placed on the needs of rural areas, urban areas with high unemployment rates, persons with limited English language skills, and Indians.* Along these same lines, a new Title was established for enactment of a program of community education. Under this Act, a community college, public school, or extension center can become the nucleus for a wide range of educational, recreational, health care, cultural, or other human services.

One of the most interesting provisions of the Amendment is a paperwork control section under Title XII which substantially reduces the amount of paperwork for colleges and universities required by federal programs. This is of special significance to administrators. It also makes it easier for states and localities to administer federal programs. The provision makes the HEW Secretary coordinator for all data and information requests to schools and colleges from all federal agencies. The provision mandates a review of material being solicited to justify how the information will be used, the timetable for dissemination, how it will be analyzed, and any cost estimate. The goal is for all duplicative and unnecessary paperwork to be eradicated. Part of this package also includes the authority for the Secretary to make grants to postsecondary agencies for the development or improvement of education management information systems.

Affirmative action was also acknowledged in this bill in the expansion and reauthorization of the Women's Educational Equity Act. The new law provides an authorization level of $80 million for the purposes of "providing educational equity for women" and establishes financial assistance to enable educational agencies and institutions to meet the requirements of Title IX (see regulations section in this summary). WEEA is a grants and contracts program for the development of models and tools to assist in bias, stereotyping, and discrimination in education. In the new law, an appropriation above a $15 million trigger level would make grants available to help schools and colleges comply with Title IX and eliminate local obstacles to achieving sex equity.

For Further Information Consult:

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200 Independence Ave., S.W.
Washington, D.C. 20201

"Education Research & the 95th Congress"
American Educational Research Association
1230 17th St., N.W.
Washington, D.C. 20036

EEO Enforcement

Although executive orders do not fall under the rubric of "legislation", the Civil Rights Reorganization directive will certainly have significant impact. Last year, President Carter ordered the reduction from 11 to 1 of the agencies responsible for ensuring affirmative action compliance in employment by federal contractors. This action included the moving of the EEO enforcement office in HEW to the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor. While compliance rules and regulations should remain roughly the same in the reorganization, the problem is that OFCCP is new to the field of employment in colleges and universities. There will be a period of adjustment for the investigators to become acquainted with the specialized problems of higher education institutions. However, if the past patterns of compliance review enforcement repeat themselves, it is probably safe to project that once the honeymoon is over, DOL will be certainly more aggressive than HEW. Administrators should therefore probably be prepared for more strict and rigorous review procedures.

Under the reorganization plan, enforcement of Executive Order 11246 and 11375 which prohibit discrimination based on race, color, religion, sex and national origin; as well as enforcement of Section 503 of the Rehabilitation Act and the Vietnam Veteran's Readjustment Act which had been shared by twelve agencies including HEW, was consolidated in OFCCP as of October 1, 1978. This means that higher education institutions with federal contracts of over $50,000 can expect to have pre-award contract compliance reviews conducted by the Department of Labor rather than HEW.

DOL has also announced its intent to improve coordination of enforcement by establishing a number of satellite offices to work closely with covered institutions on a local level. The satellite offices will report to regional offices which in turn report to Washington. Additionally, the Department has promised to provide a manual explaining changes in what is required as a result of the reorganization and information on what documentation is necessary for a pre-award compliance review. The much needed manual should be available in May, 1979.

For Further Information Consult:

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2000 Constitution Ave., N.W.
Washington, D.C. 20210

Age Discrimination

1978 has been a busy year for age discrimination. There have been two significant pieces of legislation which will affect higher education directly. The first, and more well known bill is the Age Discrimination in Employment Act amendments of 1978 (P.L. 95-256). These amendments extend the mandatory retirement age from 65 to 70, with the temporary exemption of of tenured personnel at colleges and universities not eligible for protection under the Act until July 1, 1982. This will obviously have an influence upon the present and future hiring policies of schools and will further exacerbate the employment of younger Ph.D.'s. The implication of this bill and further discussion can be found in the article "Mandatory Retirement and Faculty" by Van Court Wilkins in Vol. 1, Number 3 issue of *Trends 2000*.

For Further Information Consult:

"Age Discrimination in Employment Act — Exemption for Certain Tenured Employees of Institutions of Higher Learning",
Federal Register, Vol. 43, No. 239, Part III
December 12, 1978

"Age Discrimination in Employment Act — Employee Benefit Plans"
Federal Register, Vol. 43, No. 185, Part V
September 22, 1978

Another piece of legislation not quite as well known but which will affect colleges and universities are the amendments to the Age Discrimination Act of 1975. The Act, which just went into effect January 1st of this year, originally prohibited "unreasonable discrimination on the basis of age in programs or activities receiving federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (Revenue Sharing)." The 1978 bill (P.L. 95-478) strikes the word "unreasonable" from the Act's prohibition and permits, (1) the use of age distinctions, and (2) "reasonable" factors other than age (In effect, the new wording keeps out "bad" discrimination and leaves in the "good".). Another interesting feature of the bill is that discrimination is applied to all ages, not just the elderly. Conceivably, this could mean the widening of school doors for advanced and specially gifted children.

As of this writing, the rules are still in proposed form so there are no concrete guidelines on the specifics of the bill. One can assume that *school admissions age limits, the denial of research awards to persons over 70, age distinctions for awarding scholarships and other financial assistance, will all come under examination.* The statute also expressly creates a private right of action and authorizes social and legal services for the elderly.

As it stands now, the Equal Employment Opportunity Commission will be in charge of all age discrimination claims under this legislation, while the Department of Labor will handle all claims under the Age Discrimination in Employment Act.

For Further Information Consult:

Age Discrimination Regulations
Federal Register, Vol. 43, No. 232, Part VII
December 1, 1978

Discrimination and the Handicapped

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against an otherwise qualified handicapped individual under any program or activity receiving federal financial assistance. More specific for post-secondary education, it prohibits discrimination against handicapped persons in recruitment, testing, admissions, and treatment after admission. Colleges and universities are required to make reasonable adjustments to permit handicapped students to fulfill academic requirements, and to insure that they are not effectively excluded from programs because of the absence of auxiliary aids or physical barriers. If all means have been exhausted to meet requirements and accessibility is still unmanageable, then architectural barriers must be removed.

The Amendments to the Act (P.L. 95-602) signed this year include some new provisions and important reauthorization measures. It was agreed that the HEW secretary could authorize funds to help federal aid recipients comply with the requirements that physical barriers to the handicapped be eliminated. Another provision authorized a National Institute of Handicapped Research in HEW to coordinate programs for rehabilitation of the handicapped. The Institute will also provide grants for centers and institutions to conduct research and training for persons working with handicapped individuals. Funding for the Institute is incremental reaching $100 million in FY 82. The bill also stipulated that alcoholics and drug addicts will be protected by the Act's ban on discrimination in employment and

federal programs if they can perform their jobs and their condition does not present a "direct threat" to others.

By now each postsecondary institution should have named a coordinator for 504 Regulations and have completed a self-evaluation process in consultation with handicapped individuals and organizations. June 2, 1980 is the deadline for the completion of structural changes in existing facilities where necessary to achieve program accessibility.

For Further Information Consult:

HEATH Resource Center
"Higher Education and the Handicapped — Update"
American Association for Higher Education
1 Dupont Circle, Suite 780
Washington, D.C. 20036

Pregnancy and Employment

Discrimination in employment because of pregnancy is now expressly forbidden by federal legislation (P.L. 95-555). Intended to reverse through legislation the Supreme Court's decision in *General Electric Co. vs. Gilbert* 426 U.S. 125 (1976), which held that denial of sickness and accident disability benefits to women disabled by pregnancy did not constitute sex discrimination, the new law amends Title VII of the Civil Rights Act of 1964. Under this new provision, an employer will be required to pay sick leave and disability benefits for all absences due to pregnancy-related causes to the same extent as the employer provides benefits for other absences caused by a non-work related disability. Abortions are also covered only when they result in medical complications and when the mother's life is in danger.

The pregnancy amendment, however, is not limited to prohibiting discriminatory treatment when a woman is disabled by pregnancy. The amendment is based on the proposition that pregnancy is *not* a disability, and therefore, it forbids discrimination because of pregnancy — potential pregnancy, present pregnancy, or past pregnancy. The new law provides a grace period of 180 days from the enactment date for achieving compliance with the requirements for providing pregnancy coverage under existing employee fringe benefit plans. All collective bargaining agreements must have necessary adjustments made in them within one year.

For Further Information Consult:

The Project on the Status and Education of Women
Association of American Colleges
1818 R Street
Washington, D.C. 20009

Title IX Regulations

The issue of federal regulations is always a concern for higher education officials. The regulations are considered a nuisance by many administrators but, to the extent that federal aid is present in one form or another on most campuses, they are a necessary part of all program implementation. The most extensive and pervasive set of regulations issued this year will come in athletics. However, these regulations will have an impact on other areas of institutional policy since failure to comply would have campus-wide ramifications.

On December 6, HEW issued a new proposed policy interpretation regarding intercollegiate athletics and Title IX of the Education Amendments of 1972 (P.L. 92-318, as amended by P.L. 93-568 and P.L. 94-482). The scheduled publication of the regulations will be in April. Despite considerable controversy surrounding the proposed policy's impact on revenue producing sports, the basic concept, if adopted, would go toward finally eliminating much of the confusion facing institutions seeking to comply with Title IX. The proposed regulations will establish a two-part standard under which institutions will be presumed to be in compliance under Title IX if they can demonstrate that it:

Part I - "has eliminated discrimination in financial support and other benefits and opportunities in its *existing* athletic programs," and

Part II - "follows an institutional policy that includes procedures and standards for developing an athletic program that provides equal opportunity for men and women to accommo-

date their interests and abilities."

Under Part I an institution can show compliance by providing equal *average* per capita expenditures for men and women student athletes for scholarships, recruitment, equipment, supplies, and other financially measurable items. Sports program components which are not easily financially measurable such as opportunities to compete and practice facilities, coaching, tutoring, and medical services must be "comparable" for both sexes. If an institution cannot demonstrate that it complies with the equal per capita and comparability standard of Part I and the future growth provisions of Part II, it will not be presumed to be in compliance with Title IX. The institution would then be required to demonstrate that the disparities in funding or other benefits and services are caused by "nondiscriminatory" factors.

Institutions should also be aware that HEW is no longer the only federal agency engaged in Title IX enforcement and rule-making affecting higher education institutions. Both the Department of Agriculture and the Department of Energy have issued proposed rules for Title IX implementation, and it is anticipated that a number of other agencies including the National Endowments for the Arts and Humanities, the Veterans' Administration, and the Department of Labor may soon be following suit.

For Further Information Consult:

Project on the Status and Education of Women
Association of American Colleges
1818 R St. N.W.
Washington, D.C. 20009

CETA

A major piece of legislation that will affect higher education in several ways is the 4-year extension of employment training programs under the Comprehensive Employment and Training Act, (P.L. 95-524). The authorization for this bill is $11 billion. CETA is a form of revenue sharing which provides state and local government with federal funds to provide manpower services to the unemployed, underemployed, and disadvantaged. *Because the Act places a heavy emphasis on training as opposed to public service employment, educational institutions will play a significant role in its implementation.* Colleges and universities, as well as technical and vocational schools, are often used as program sponsors or resources for a large number of projects around the country.

The most significant link to education will be through the youth programs in Title IV. These programs generally try to establish links between education and employment for disadvantaged youth. Services which schools can provide are employment counseling, classroom training, on-the-job training, job development and placement. The only qualification is that a cooperative relationship must exist with the school, state and local CETA authorities, and local educational agencies. The regulations have not been released by the Department of Labor, but the law mandates an extensive and complex relationship. In particular, community colleges should especially benefit under this Title, as well as education and training services under Title II.

There are several other provisions in the bill which have potential funds for institutions of higher education. *For example, 20% of the total CETA appropriation has been authorized for special federal research at universities to help solve the nation's employment and training problems.* Colleges and universities may contract with the Department of Labor for research funds. Under some of the public service employment programs, institutions may receive federal money to hire maintenance workers and other campus employees. This option is especially applicable for hiring employees in high unemployment areas. Enough funds have been authorized to fund approximately 400,000 job slots in FY 1979.

For Further Information Consult:

Human Resources Development Institute
American Federation of Labor and Congress of Industrial Organizations
816 16th St., N.W.
Washington, D.C. 20006

Energy and Higher Education

On November 9, the long awaited National Energy Act was signed into law by President Carter. The Act is quite extensive in terms of all facets of energy policy, and it contains sections which will have important implications for higher education. *There are five bills in the Act, but it is the National Energy Conservation*

Policy Act of 1978 (P.L. 95-619) which is the legislation that directly affects colleges and universities. Title III, Part 1 of this measure authorizes $900 million over a three-year period to provide matching federal grants to schools and hospitals for "energy audits", energy conservation projects, technical assistance, and installation of energy saving equipment. (Of the total $900 million authorization, $200 million is for FY 78, $300 million for FY 79 and $400 million for FY 80). The authorization and distribution of all grants will be made through the state energy agencies. 90 days after the NECPA has been enacted, the Department of Energy will propose guidelines for state energy plans. The state, then, has 90 days to survey their energy needs and submit plans and proposals for grants to DOE. These plans will be the basis for future audits of existing eligible facilities, estimates of energy savings, and the allocation procedures for all grants.

The ultimate goal of the NECPA is to conduct energy conservation projects. In order for schools to be eligible for energy conservation project funds, they must have completed a thorough audit and have a definite means of acquiring and installing "energy conservation measures". The term "energy conservation measure", as defined by DOE, means an installation or modification in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source. Colleges and universities are eligible for grants and technical assistance in implementing these projects. It is absolutely essential that the audits have been made prior to the development of project plans and the studies be thoroughly explained. Schools have the option of using in-house technical support or consultants. The emphasis with these grants is on careful analysis of the institution's ability to control and change its energy resources within the scope of the overall state plan. Those campuses which have developed project outlines in close accordance with the state plans will have a better chance of receiving grants and may qualify for funding.

Although $900 million is a considerable amount of money, school officials should maintain a realistic attitude toward the legislation's intentions and capabilities. If a school does receive a grant for audits or energy conservation projects, the money will not cover all the costs nor will it solve all of the energy problems. The purpose of the Act is to stimulate energy conservation, not to be a panacea for some of the fiscal and energy ills of the recipient institutions. This realism should be tempered by three sobering facts. The first is that up to 25% of each state's budget will go to just the administration of the plan. This reduction of net funds will considerably shrink the total dollars available. Secondly, when institutions petition the states for grants, the allocation will be made on a formula including population, fuel availability, climate, fuel costs, and other criteria deemed relevant by DOE. In other words, some schools will be more naturally predisposed toward funds than others. Finally, higher education institutions are a small percentage of all institutions eligible for these energy grants. HEW estimated that there are approximately 25,500 institutions which are eligible for energy grants. Of those, only 3,100 are institutions of higher education; the remaining 22,000 are elementary and secondary school districts and hospitals. Higher education may get a slice of the pie, but it will be a small slice, and institutions should be prepared to tap other resources as well.

For Further Information Consult:

Energy Alert 78-1
A Special Report on the National Energy Conservation Policy Act of 1978
Office of Special Programs
Association of Physical Plant Administrators of Universities and Colleges
11 Dupont Circle, Suite 250
Washington, D. C. 20036

Office of State and Local Programs
Department of Energy, Room 4117
20 Massachusetts Ave., N.W.
Washington, D. C. 20545

UPDATE 96th

Presently, the Energy Department is in the unusual state of having more money than it can spend. The $900 million appropriated through 1980 has gone mostly unspent and future allocations look uncertain. The reason for the surplus is because the Congress delayed passage of the Energy Act until the end of the session. In fact, the appropriations were signed into law before the authorizations got out of Congress. At this point, virtually none of the FY 78 appropriations have been spent, and it is estimated that only about $20 million out of the $300 million appropriated for FY 79 will be obligated. Furthermore, this $20 million is not to be spent on the entire energy program, but only on the preliminary energy audits. Essentially, this means that the implementation of the program is about 2 years behind schedule.

There are a few options. One is to forget the '78 and '79 appropriations and begin to work on 1980's budget. There is no one who likes this option because all sides want somebody to spend the money. Secondly the expiration date of the appropriations could be pushed back, thereby freeing the money to be spent on the intended programs specified by the Act. This option is the one DOE prefers and it is asking Congress to extend the expiration date. Finally, the appropriated money could be spent elsewhere on other energy-related programs. The American Council on Education is endorsing this option by recommending that some of the unspent money be shifted to institutional grants for renovations and reconstruction of academic facilities under Title VII of the Higher Education Act. All of these actions will be considered, but as of this writing, no final decisions have been made.

Tax Provisions and Higher Education

The most well known and controversial taxation issue for the education community was tuition tax credits. While these credits were being debated, two other pieces of taxation legislation were being worked out and successfully passed with the agreement of both the Congress and the Administration. The first measure was the Revenue Act of 1978 (P.L. 95-600), an $18.7 billion dollar tax reduction bill. This bill, in the form of tax reductions for individuals, private industry (capital gains taxes), and foundations, is essentially a reform of major sections of the tax code. Because of the complexity of the bill and uncertainty of possible consequences, the total impact upon higher education is not clear at this time. However, there are some major educational provisions and other indirect effects that can be noted.

One of the most significant provisions falls under Title I - Individual Income Tax Provisions, dealing with educational assistance programs. Under prior law, there was no provision for a specific exclusion from an individual's income for educational assistance provided by an employer. Generally, any educational benefits would have been subject to tax unless they qualified as job-related educational expenses deductible as a trade or business expense by the individual. The new Act excludes from an employee's gross income amounts paid for expenses incurred by the employer for educational assistance to the employee if the amounts are paid, or the expenses incurred, pursuant to a program which meets certain requirements. *In the case of education paid for or provided by the employer under such a program, the new legislation basically eliminates the need to distinguish job-related educational expenses from personal educational expenses for income tax purposes.* This dropping of the job-related criterion is especially important because it was too ill-defined for employers and often served as a disincentive for using educational benefits. Another aspect of this is that the education need not be part of a degree program.

The educational benefits which may be excluded from income are those furnished by an employer *only* to employees. Under the Act, an employee can exclude from income, tuition, fees, and similar payments, as well as the cost of books, supplies and equipment paid for or furnished by the employer, providing the employee does not retain any use of the equipment after the education is completed. In order to be a qualified program, an educational assistance program must meet requirements with respect to nondiscrimination in contributions and benefits and in eligibility for enrollment. This provision would appear to encompass tuition remission for employees of independent colleges. In sum, both the employer and the employee will have to be aware of the new ruling. The employer will not have to withhold income tax on the amount of the educational assistance and the employee will not have to pay tax on this amount as income.

The exclusion applies to taxable years beginning after December 31, 1978, and ending before January 1, 1984.

Also under Title I is a section dealing with the cancellation of student loans. Under certain student loan programs established by the federal government, all or a portion of the loan indebtedness may be discharged if the student performs certain services for a period of time in certain geographical areas pursuant to conditions in the loan agreement. Until the Tax Reform Act of 1976, the Internal Revenue Service ruled that any loan forgiveness had to be reported as taxable income. This 1976 legislation nullified that stipulation through 1978 and in this 2-year period loan forgiveness was not taxable. The Revenue Act of 1978 extends this exclusion for four more years to apply to loans forgiven prior to January 1, 1983.

The tax cut strategy of this bill applies to private foundations as well as individuals. Part of this tax reform effort has been to lower the excise tax on the net investment income of private foundations from 4%, which it is now under present law, to 2%. *The theory behind the tax cut is to stimulate charitable donations to colleges and universities from private foundations by reducing the amount foundations pay the government to audit their accounts.* The IRS stipulates that the amount of the tax must be subtracted from the minimum amount the foundation must give to charitable organizations to retain tax exempt status. The result of the higher tax rate was that in many cases, it had reduced the foundations' net investment income and consequently reduced the amount of charitable giving.

Unfortunately this was about the only incentive in the entire tax reform bill to boost charitable giving. The House had submitted the controversial Fisher-Conable proposal to permit individual tax payers who take the standard deduction to take an additional charitable deduction. This proposal was made in the light of several factors: the growing percentage of taxpayers who take the standard deduction (77%), the increases in the standard deduction itself, and the documented disincentive effect on charitable contributions when the charitable contribution deduction is eliminated on non-itemized tax returns. It is predicted that colleges and universities will lose a significant amount of small gifts from lower-middle income tax payers without this additional incentive. Nonetheless, this potentially effective incentive was voted down in committee and never made its way into the tax reform package.

A final noteworthy provision in the Revenue Act is the exemptions of all National Research Awards from taxation through 1979. The awards given under section 472 of the Public Health Service Act are to be treated as scholarships or fellowship grants under the tax code. This is important to institutions in that a lot of these awards are from the National Institutes of Health in the form of fellowships for doctoral and postdoctoral studies.

Since these awards are now defined as scholarships and grants, they are exempt as taxable income for taxation purposes. Furthermore, any award to a student of two, three or four years duration, if made before the end of 1979, will be eligible under the moratorium even though payments may be made after 1979.

Another taxation measure with potential for a substantial educational impact is the legislative ban (at least until 1980) the Congress put on the IRS for taxing fringe benefits of the employee (P.L. 95-427). This legislation is basically a defensive position of the Congress and gives a two-year respite from IRS activity in this area. The history of this Act revolves around the meaning of what constitutes taxable income. The Supreme Court has defined it as "any economic or financial benefit conferred on the employee." Consequently, in 1975, the Treasury Department (IRS) issued a discussion draft of proposed regulations which contained a number of proposed rules for determining whether various fringe benefits constitute taxable compensation. There was considerable difficulty in ascertaining what does qualify as taxable, so the proposed rules were withdrawn and the only guidelines now are the facts and circumstances of individual cases.

In any case, by adopting the Fringe Benefits Act, the Congress precluded the IRS from issuing any sort of final regulations which would govern the income tax treatment of fringe benefits prior to 1980. This is a good move for education in that educational benefits provided by employers such as some grant programs, tuition remission, and other benefits negotiated in many teacher contracts, would probably have come under very close scrutiny. Before 1980 there is time for a congressional study of the issue and the new law will give Congress a chance to develop a more comprehensive policy on the issue. With support from both unions and education associations, the prospects appear to be favorable that educational benefits will be given preferential tax treatment, i.e., not taxed.

For Further Information Consult:

Revenue Act of 1978 and Fringe Benefits Act. — Section by Section Summary
Prepared for the use of the Committee on Ways and Means, U.S. House of Representatives, and Committee on Finance, U.S. Senate by the Joint Committee on Taxation.
November 27, 1978. U.S. Government Printing Office

National Association of College and University Business Officers
1 Dupont Circle, Suite 510
Washington, D.C. 20036

National Association of Independent Colleges and Universities
Government Relations Office
1717 Massachusetts Ave., N.W.
Washington, D.C. 20036

White House Conferences on Arts and Humanities

This is not one of the major pieces of education legislation of the 95th Congress, nevertheless colleges and universities should be made aware of its existence. P.L. 95-272 directs the President to convene a White House Conference on the Arts and a White House Conference on the Humanities, both to be held in Washington, D.C., not later than December 31, 1979, for the purpose of assessing the problems and issues relating to the arts and humanities. The conferences will develop recommendations for growth in all parts of the nation leading to legislative action which will hopefully establish a climate within which the arts and humanities can flourish. If and when the conferences are set up, colleges and universities will play a large part in the planning, participation, and implementation of any directives.

For Further Information Consult:

Office of Congressional Liaison
National Endowment for the Humanities
806 15th St., N.W.
Washington, D.C. 20506

Office of the Chairman
National Endowment for the Arts
2401 E St., N.W.
Washington, D.C. 20506

UPDATE 96th

This legislation has run into the austerity fever of the appropriations committees and, at this writing, Congress has deleted appropriations for the Conferences. Negotiations are in progress for either supplemental funding or the possibility that the National Endowment for the Humanities and the National Endowment for the Arts might defray some of the costs with their budgets. However, there have been no decisions either way and the only position one can take at this point is one of waiting and seeing.

Aid for Middle Income Students

Fortunately, tax credits were not the only means of providing financial assistance to students. Instead, Congress, with the enthusiastic support of the President, passed the Middle Income Students Assistance Act (P.L. 95-566). As the tax credits attempted, this act theoretically tries to help out those middle-income families hardest hit by increasing college costs. On the one hand, they don't have enough income to support a student, yet their income level generally makes them ineligible for most of the existing federal grant and loan programs. This tuition bill attempts to ease the family income requirements for these grant and loan programs. The very popular BEOG program now has a family income limit of $26,000, as opposed to the earlier limit of $16,000, making about one and one-half million more students eligible. The BEOG maximum was extended up to $1,800 from $1,600. It also eliminates the family income requirements from the program under which the government assists in paying interest on guaranteed loans (previously this was limited to families with incomes below $25,000). Funds available for the SEOG program were also expanded another $70 million, and the College Work-Study Program received an additional $115 million. Not only are middle income families and needy students helped by this important legislation, but more generous treatment is given also to "independent" students. One final, often overlooked, implication is that this new bill will establish a new and stronger foundation from which to consider further approaches to the problem of student financing in the critical reauthorization of the Higher Education Act this year in Congress.

The importance of this legislation goes beyond the differences it has with tuition tax credits. That is, below this shift from tax credits to direct student financial aid is a philosophical distinction and approach to education policy. The former is basically an income-based program, while the latter is primarily a need-based program. It is clear that the Administration prefers the student aid approach, and it is reasonably apparent that most of the members of Congress do favor individual aid as well, in spite of a substantial, vocal minority supporting the tax credits. The position of the higher education associations, while somewhat unclear in the earlier phases of the debate of these bills, now seems to be solidly behind student aid. Colleges and universities will receive more money and more eligible students through the expansion of these programs. It should have a salutary effect on some of the enrollment ills of schools feeling the pinch of retrenchment. An important point is that the need-based approach to financing education is now firmly entrenched as the formal policy of the government.

For Further Information Contact:

Division of Training and Dissemination
U.S. Office of Education
Room 4661, R.O.E. -3
400 Maryland Ave., S.W.
Washington, D. C. 20202

Bankruptcy and Student Loans

The large and complex Bankruptcy Reform Act of 1978 (P.L. 95-598) was designed to overhaul the nation's bankruptcy laws for the first time in 40 years. Part of the overall Code is a provision that deals with college students and any federally insured loans. The new law prohibits student loan borrowers from declaring bankruptcy in order to discharge any loan debts in the first five years after their repayment period begins. Declaration of bankruptcy is possible within that time frame only under conditions of extreme hardship. While the prohibitions extend to all federally insured loans owed to government agencies or higher education institutions, its most noticeable impact will be on the Graduate Student Loan (GSL) and the National Defense Student Loan (NDSL) programs.

For Further Information Contact:

Bureau of Student Financial Assistance
Division of Policy and Program Development
Office of Education
400 Maryland S.W.
Washington, D. C. 20202

Appropriations

An area of major concern for colleges is appropriations. It is possible to observe how federal dollars are actually expended in relation to any nominal federal policy. As with legislation, and to some extent, regulations, the appropriations in this year's budget reveal much about the present and, perhaps, future plans of the government for education. The 95th Congress produced some very interesting funding patterns for higher education. Overall, the appropriations, while not always matching the authorizations, were very encouraging from the standpoint of a positive federal role. A careful bottom line analysis of actual expenditures demonstrates that federal policy is basically either supportive in nature or has a tendency to equalize other existing programs. Contrary to the common accusation that federal policy is interventional and domineering, the actual flow of dollars is very unobtrusive and primarily serves to bolster state and institutional policies. Over half of the federal dollars targeted for higher education is in the form of student financial assistance. The Basic Educational Opportunity Grant program, Supplemental Educational Opportunity Grants, Work Study, Incentive Grants for State Scholarship programs, and other direct student loan programs. This aid is directed *solely* at individual student need and is free from any sort of federal influence in institutional self-determination.

The area of student aid has remained relatively consistent, but the area of federal categorical grant programs is a truer reflection of the government "putting its money where its mouth is." A closer look at these funding patterns reveals some important policy directions on the part of the government. Appropriations for major categorical grants programs in the Office of Education were at the previous year's level or showed modest increases. In these inflationary times, this is a good sign and proves that both the administration and Congress give education a high priority. Programs for minorities and disadvantaged fared especially well, with Special Programs for disadvantaged (TRIO) receiving $140 million. This rather large figure is significant in that it is an $8 million increase over last year compared to a $3.25 million increase in FY 78.

Other programs, although appropriated at much smaller levels are also revealing. The Graduate Professional Opportunities Program showed a gain of $4.75 million. Other programs received funding only after political disagreements between the Administration and the Congress. For example, Congress restored funds to three programs which the Administration had slated for elimination; $3.5 million for state postsecondary education commissions, $16 million to University Community Services (Title I, Higher Education Act), and $9.975 million to College Library Resources (Title II-A). Congress, however, did not restore the $7.5 million authorized in FY 78 to the Undergraduate Institutional Equipment Program (Title VI).

One other noteworthy appropriation was the Career Education Incentive Act (P.L. 95-207), passed this year and funded at $32 million. In addition to state programs and elementary and secondary projects, this act provided funds for grants to colleges and universities. President Carter, however, on January 31, 1979, issued a recission order for $22 million and reprogrammed the remaining $10 million for career education to the Special Projects Acts. Congress must approve the recission order within 45 legislative days for the impoundment to be effective. While the $10 million figure might not seem imposing, the appropriation is significant in that it is the first time the federal government has targeted a noticeable amount of federal dollars for career education in colleges and universities.

The two major national foundations also reflected strong executive and congressional interest. Congress appropriated $911 million in new budget authority for the National Science Foundation in 1979, an approximate 5½% increase over 1978's level of $864.9 million. Although the 1979 figure was an increase, it was somewhat below the Administration's request for $940 million. Congress cut slightly the request for basic research from the Administration request of $857 million to $811 million and the Special Foreign Currency Program from $6 million to $4 million. However, they increased funding for science education to $80 million, $2.4 million more than Carter's budget requested.

The National Endowment for the Humanities did well in FY 79, with Congress approving the $145 million the Administration requested. The largest gains were in funding for Challenge Grants which received a $9.5 million increase from $17.5 million to $27 million. Public Programs also showed increases with NEH learning museums and libraries as other expanded areas under higher education programs. Other priorities will include an increased emphasis on social history, regional, state and local histories, and increasing research opportunities for developing scholars and individuals in non-research institutions.

A more comprehensive review of funding patterns also appears in this issue.

For Further Information Consult:

Federal Resources Advisory Service
Association of American Colleges
1818 R St., N.W.
Washington, D. C. 20009

Looking Ahead: Reauthorization of the Higher Education Act

The most important legislative issue facing higher education in the next several months will be the reauthorization of the Higher Education Act. This legislation is of critical importance because many of the key higher education programs are authorized under this Act. The authority of the Act is due to expire at the end of the year, but it would automatically be extended for another year if the legislation failed to make it out of Congress. Except for Title III and Title IV, the reauthorization effort is expected to progress without too many serious complications. Following the subcommittee hearings, the bill will be sent to the full committee for more hearings and then the amended bill will make its way to the floor. Final floor vote is not expected until the middle or the end of summer. Assuming that the final bill is in accord with the requests of HEW and most higher education associations, little resistance is expected from the Administration or the Senate.

In Title IV, the student assistance programs, discussions are expected to focus on possible overhauls or consolidations of some of the programs. Both ACE and HEW Secretary Califano have already sent recommendations to the House Subcommittee on Postsecondary Education hearings about revamping both the individual grants and loans programs. Basically, the proposed changes will be targeted at eliminating some of the complexities and inequities in the assistance programs. One method of doing this would be to establish two types of loans, one low interest and the other high interest, which would be differentiated by a need-based formula. This would theoretically have a simplifying and equalizing effect on the present system of various types of loans and different standards of eligibility. Other proposals include the establishment of a central loan bank, federal assumption of all loan defaults, institutional assumption of all loan administration, and more incentives to states to set up more of their own scholarship programs. There is clearly a call for change, but to what extent the change will occur is hard to project.

The debate concerning Title III programs, federal aid to strengthen developing institutions, may possibly result in elimination of some of the programs or, at least, the restructuring of many of them. The present authorization is $120 million, but it is impossible to guess what the future authorization, if any, will be. The suggestions have ranged from total elimination of the program to a doubling of the present authorization. The assumption, however, is that the program will continue at modest increases, as long as the difficulties can be worked out. So far Title III has expended $700 million on those institutions with a disproportionate large number of students receiving federal assistance. Needless to say, this type of institutional aid is controversial, especially on Capitol Hill. The problem has been that there is no clear understanding of what the impact of this program has been; or, more seriously, there is no general agreement as to the intention and goals of the program. Other program-related questions will involve what qualifies as a "developing institution", which institutions are eligible for aid, and what kind of aid is proper.

More importantly, both debates will inevitably give rise to larger policy questions as to the purpose of individual and institutional aid and what role they serve in the overall national purpose. These questions will have to be considered along with the issue of "academic quality" and what responsibilities the federal government has in this regard. Answers to these questions will have consequences not only for Title III and Title IV funding but also for the very volatile issue of the federal-state relationship. In other words, although the reauthorization is primarily for the extension of most postsecondary programs through 1985, it could also be a crucial time for policy decisions of a longer duration.

General Summaries and Resources

Summary of Major Legislative Action of the Committee on Education and Labor
U.S. House of Representatives,
95th Congress
November, 1978
U.S. Government Printing Office

American Council on Education
Office of Governmental Relations
1 Dupont Circle, Suite 800
Washington, D. C. 20036

"BUSINESS OFFICER"
National Association of College and University Business Officers
1 Dupont Circle, Suite 510
Washington, D. C. 20036

NAICU NEWS
National Association of Independent Colleges and Universities
1717 Massachusetts Ave., N.W.
Washington, D. C. 20036

LEGISLATIVE BRIEFS
American Association of Colleges for Teacher Education
1 Dupont Circle, Suite 610
Washington, D. C. 20036

CASE CURRENTS
Council for Advancement and Support of Education
1 Dupont Circle, Suite 530
Washington, D. C. 20036

"GREEN SHEETS"
National Association of State Universities and Land-Grant Colleges
Office of the Executive Director
1 Dupont Circle, Suite 710
Washington, D. C. 20036

NEWS NOTES
Association of Governing Boards of Universities and Colleges
1 Dupont Circle, Suite 720
Washington, D. C. 20036

Higher Education Daily — October 17

Higher Education and National Affairs — October 13, 20

Chronicle of Higher Education — October 10, 16, 23, and November 20

Future Trends in Funding for Higher Education

Kathryn Mohrman

What is the future of federal support for postsecondary education? Making predictions is similar to examining the proverbial glass of water — is it half empty or half full? Certainly the federal government provides substantial support for colleges and universities. Even with the proposed cuts in certain programs for FY 1980, the President's request for higher education exceeds $5 billion. However, those cuts do suggest that federal support for education may be more difficult to obtain in the years ahead. We have probably seen the end of big increments in higher education appropriations for some years to come.

The level of higher education funding for the next several years will depend in great part on the state of the national economy. As long as inflation continues to rise as rapidly as it has recently, the executive branch will be under some pressure to hold spending down. I would expect that the spirit in which President Carter presented his FY 1980 budget message will continue into the 1980's. Rising hospital costs, Social Security expenditures and veterans benefits, combined with political decisions to increase defense spending and to move toward a balanced budget, leave little room for improvement in the picture for higher education. In fact, staying even may be the big battle in the years ahead.

The phrase "staying even" also suggests a tendency to maintain the status quo. In most cases, program categories will remain the same, with the debate centering on the dollars to be funneled into each one or on the possibility of eliminating some of the smaller ones. My guess is that there will be little changing of the categories for two main reasons. The first is the constituents. At a time when budget requests are being slashed, higher education associations and individual institutions are unlikely to give up the known, even if imperfect, for the unknown, which could leave them worse off or without support at all in certain areas. Proposals for radical reshuffling of the way money is funneled to colleges and universities could upset a delicate balance that is tenuous anyway.

The second reason is the Congress. The Hill, too, has come to think of assistance for higher education in certain patterns of programs working through specific departments. Subcommittees and committee chairmen on authorization and appropriations committees are as protective of their power to oversee executive branch programs as the bureaucrats are of their authority. Aid to higher education is divided, and comparative decisions are not really being made. Each lack of a clear federal education policy suggest that tradeoffs, for example, between Guaranteed Student Loans and science education research are not being considered. To a certain extent this lack of coherence is to the advantage of higher education, since it enables the players to fight for individual programs on a piecemeal basis.

But what of a Department of Education? Certainly Carter has made clear that he will push again for this reorganization. A bill was introduced almost immediately in the Senate and will probably pass that body in a form similar to that of the last Congress. While the creation of a new department would certainly rearrange the federal organization chart, it would probably have little influence on the way individual programs for higher education are run. Agency officials in charge of different education programs have two general predictions: the creation of a new department would cause enough confusion that it would take several years to get beyond the window-dressing state, and secondly that the operation of individual programs would be virtually unchanged regardless of their places in the bureaucracy.*

Predicting the future of federal funding for higher education, then, is really intelligent guessing about current programs and their fate over the next few years. Within the Education Division of HEW, the bulk of the funds will continue to go to student assistance programs. Of the $5 billion currently going to higher education, $4.6 billion is earmarked for scholarships and grants. The remaining categorical programs form the area where changes may occur. Of course many smaller programs under $20 million have been subject of the annual budget game for many years. Repeatedly, the President has not requested funds for such programs as University Community Service (Title I, HEA) or College Library Resources (Title II-A, HEA) as a means of keeping the budget request down, knowing that the Congress is likely to respond to constituent pressures and restore the programs. The problem comes when the cycle is not completed, as happened in FY 1979 when college instructional equipment (Title VI, HEA) received no appropriations. With the more austere mentality of the 96th Congress, unfunded programs could be a more common occurrence.

Unfunded programs could also be vulnerable as the reauthorization of the Higher Education Amendments progresses. Once again, this process is not likely to move in new programmatic directions but the Congress

*See the article on the Department of Education in this issue.

may scrutinize (and perhaps delete) titles that have been deemed unworthy of appropriations. Other programs that could be questioned include Graduate Programs (Title IX), Community Colleges (Title X), and Law School Clinical Programs (Title XI).

The picture for higher education is not totally bleak, however. One important area in which there is significant moral and financial support is improving the educational status of minorities and women. In a year when many educational programs were cut, the Graduate/Professional Education Opportunities program saw a budget request for FY 1980 nearly twice as high as the previous year. The Developing Institutions program (Title III, HEA) continues to receive strong institutional support despite criticism of its regulations and procedures. President Carter has also directed federal agencies to eliminate barriers for black colleges in competing for federal grants. In addition, the Women's Educational Equity program continues to receive modest funding increases.

International education is another area of higher interest and support. After a period of decreasing appropriations and relative lack of concern, international studies activities are witnessing a resurgence, prompted in part by the creation of the President's Commission on Foreign Languages and International Studies. These events reflect a recognition by at least some members of Congress that the United States needs citizens and experts trained to cope in an increasingly interdependent world.

The Fund for Improvement of Postsecondary Education (FIPSE) also has developed a better understanding on the Hill of its mission, although increased sympathy will probably not translate into increased appropriations. In the next few years, FIPSE will probably continue its emphasis on nontraditional students, although the concern may focus more on academic and professional mobility for such students rather than just threshold services. Non-traditional students need quality programs to compete successfully in graduate programs and ultimately in a full range of jobs and social situations. FIPSE is also anxious to receive more proposals for educational services for the handicapped and the elderly. At the same time, it may turn away somewhat from its learner-centered focus to meet special problems of the 1980's such as institutional rigidity, the decline in faculty mobility, and the promises of economically feasible technologies for self-learning.

The science education division at the National Science Foundation is one of the units whose inclusion in a Department of Education has been hotly debated. Regardless of the ultimate outcome, the division has identified two major targets for the immediate future: science literacy and greater participation of women and minorities in scientific careers. While individual programs focus on these two objectives, NSF will put more emphasis on these goals within existing programs. The current interest in improving science education for early adolescents cuts across both, as junior high school is the last point at which many Americans study science and is also the age at which girls and minorities must make a decision to study mathematics and science in high school to be prepared for college science. Other areas of special emphasis are expansion of institutes for elementary and secondary teachers, informal education activities for adults and children, and research on and materials development for improved learning processes in science and mathematics.

NSF has recovered from the MACOS (Man: A Course of Study) controversy with an improved image and relationship with Congress, marked by small appropriations increases. In many ways the science education programs are in a more favorable position for competing for funding but at a time in which the competition has become very tough.

The recent past for the National Endowment for the Humanities and the National Endowment for the Arts has been a series of substantial dollar increases. The future will probably bring only modest increases that may translate into level funding in real dollars. The endowments are facing only now the difficult decisions among competing interests for limited or shrinking resources. At NEH, most programs will probably continue the same funding levels and program directions. The President's budget requests a modest increase for research grants, reflecting the Endowment's interest in state and local history and in science, technology, and human values. NEA will continue to use its appropriations primarily for support of professional artists. There has been some talk of doing more in arts education at the postsecondary level. Various arts organizations are putting more pressure on NEA in this regard. However, it is difficult to predict at this time if the Endowment will introduce a major initiative in this area.

Basic and applied research is an area in which there is renewed interest and support after a period of declining fortunes. The FY 1980 budget request reflects this change in atttitude. In an otherwise stringent budget, the President proposed a 9 percent increase in funds for basic research. Carter's budget statement included a recognition of the federal

government's role in investing in the future through research.

At the National Science Foundation, where much of this research is supported, areas of special interest include laser chemistry, sub-micron science, human nutrition, and environmental problems. At the same time, NSF has recognized the problems that colleges and universities face with obsolete equipment by proposing to increase funds available to update facilities and equipment. The increase in research monies will also help to provide more opportunities for young scholars and researchers. Other trends in federal support for university research include a shift within the Department of Agriculture from doing research internally to supporting activities at universities and laboratories. The Department of Energy is putting its greatest emphasis on solar energy technologies. While the National Institutes of Health will probably not be getting large budget increases in the next few years, they will be likely to continue their current priorities on problems of nutrition and aging.

In other research areas, the National Institute of Education is moving toward involvement in a wider range of educational issues through support of researchers previously not involved with the Institute. Trends for the coming years include raising literacy levels, effective school administration, and a new program in postsecondary organization and management. NIE will also continue its current plan of accepting unsolicited proposals in areas other than the announced priorities.

What does all this mean for colleges and universities? Obviously the grand days of federal largesse are gone. Agency programs and individual proposals increasingly will need to present a strong justification for existence and support. But the continued scrutiny over the next several years could encourage bureaucrats and institutions alike to think more clearly about the real needs and priorities for higher education and the appropriate policies to meet them. Fiscal pressure may force all the parties involved to be more realistic about the future of colleges and universities and the federal responsibility for supporting them.

At the same time, more careful thinking about federal programs puts a greater responsibility on colleges and universities to be more active in determining those policies. While national associations continue to work with higher education supporters on the Hill, individual institutions need to speak out on the benefits existing programs provide on their campuses as well as emerging problems not addressed by federal programs. Since the ultimate goal of federal funding is stronger colleges and universities, each institution should take part in the effort to present the case for continued funding for postsecondary education. The dollars you protect may be your own.

A Department of Education? Summary of Proposals and Policy Implications

John W. Crewson

On February 2, the Board of Directors of the Association of American Colleges issued a resolution which opposed the establishment of a separate federal Department of Education. They were concerned that a new department would upset the traditional division of responsibility for higher education between the states and the federal government and unduly concentrate federal oversight of higher education within one agency of the federal government. They feared it would also increase the likelihood that federal regulation of accreditation and other academic matters would erode the authority of colleges and universities over their programs and practices. Following the Board's decision, AAC initiated a mail ballot of its membership. Of the 640 institutions, 78% of those responding opposed the creation of a Department, 17% were in favor, and 6% abstained. The results of the poll and many of the comments by the schools made it clear that the issue is a difficult one.

This article will examine some of the arguments related to the Department of Education in more detail. There are few substantive studies and discussions which illuminate the primary issues. Most discussions are either very political in nature, designed to support a special interest, or are mere projections of what the future might bring. This review will limit itself to a discussion of some of the primary comparative points of the senate bill (S.210) and the President's bill (H.R. 2444), and the long-term policy implications of them. Specifics of the bills and their success or lack of it in Congress are only part of the over-all policy perspective. Regardless of whether the proposed department is established or not, these issues will remain in the education community for a long time.

The first observation to make is that the idea of a separate department for education is not a new one. In 1867 President Andrew Johnson signed into law the establishment of a non-cabinet "Department of Education". This agency lasted about two years, at which time it was subsumed in the Department of Interior and its independent status was essentially stripped away. It remained there until 1939 when Franklin Roosevelt established a new Federal Security Agency consisting of an assortment of unrelated social and educational programs. There was really no consistency or coherence to this agency, only the fact that there was no other place to put the programs in the existing federal structure. In 1953 President Eisenhower renamed the agency the Department of Health, Education and Welfare. The change was in name only, since no new powers or programs were given to education.

During this time there had been well over 100 separate pieces of legislation advocating department autonomy for education. None of these ever reached the floor of the House or Senate until last year in the 95th Congress. One reason for its finally achieving Congressional action is the size of the education budget. The 1867 "department" had a budget of $15,000, increasing slowly until it reached $400 million as the Office of Education in the Department of Health, Education and Welfare under Eisenhower, rapidly jumping to $4 billion during Johnson's Great Society initiatives, and finally settling at over $13 billion for the present legislation. At this figure the proposed department's budget is already larger than five other cabinet budgets and will probably continue to grow. The old argument that the government should remain unobtrusively and quietly behind the scenes in education is patently inoperative and unrealistic. There is no longer any doubt that there is a strong federal interest and it is here to stay.

On the policy level, these two bills are remarkably similar and differ only in negotiable programmatic details. By and large, the issues may be divided into three general concerns: managerial, political, and territorial. In terms of management, both bills maintain that public policy is best served by the centralization of most federally sponsored education programs. There should be one office which will not only centralize all programs, but also coordinate them. As it stands now, the management of education programs is dependent not only on the offices in the Office of Education, but the offices in Health and Welfare and numerous other agencies.

One result of this present structure is that education policy becomes the product of assistant secretaries and deputy assistant secretaries for management, public affairs, budget, policy, etc. There is no single person or office which is responsible for the generation of policy. Consequently, there is an inordinate amount of duplication and bureaucratic redtape. This lack of internal intra-agency coherence is only part of the problem, since policy fragmentation is also a problem in inter-agency relations. Since the Office of Education does not really have the locus for a broad-based educational policy, the various agencies can and do devise their own strategies. Both bills clearly see this as a major problem and both recommend a reduction in programs, offices and people in authoritative positions, thus streamlining the policy

channels and allowing for better communication and coordination. Of the two bills, the President's proposal is the more streamlined. It assigns fewer staff and line responsibilities to the Executive level, thereby creating more "flexibility" for the Secretary.

The opponents of the department, on the other hand, maintain that this centralizing strategy is exactly what education does not need. Their position is that a reorganizational shift will adversely affect the control of the policy-making apparatus. One strength of contemporary education, it is argued, is its' diversity of institutions and their own forms of governance. Each school has developed its own characteristics and flavor due to a unique combination of state and local control. To transfer that responsibility to a distant bureaucracy would cause colleges and universities to lose their own individuality and self-determination. Furthermore, even if there was a reorganization, the alleged improvement in coordination would really not occur since both bills include very few of the major federal education programs in other agencies. The National Science Foundation, employment training programs in the Department of Labor, veterans' education benefits, health programs, or even the major endowments in the arts and humanities, are not included in either bill. The new department would be in charge of only peripheral programs of minor status, so there would be little change in terms of substantive management and administration. (See attached charts at end of article for more information on particular programs and the proposed bills).

Over and above this debate on particular responsibilities and program inclusion, there is a profound difference of opinion in policy. The proponents of the separate department feel that all programs which have some element of training or education should fall under the rubric of education and be centralized to some extent. If this characterization is too strong, the programs should at least have some coordinating responsibilities with officials in education. By accomplishing this, centralized education authority is assumed to have certain inherent benefits which will enhance the quality of all educational programs, regardless of their agency affiliation. Opponents maintain that this view of education totally misrepresents the purpose of education. Education cannot be considered to have one general direction or purpose which a better streamlined and coordinated bureaucracy can encourage. Education is closely connected to the specific activity with which it is functionally related, be it manpower, research, or whatever. By taking education out of its natural habitat and subsuming it under a generalized category is to void it of any individuality and any specialized intent. The end result of this process will be that individual achievements would be dissipated among general, standardized scales of evaluation. If this is the case, then duplication of effort and bureaucratic inefficiency is a small price to pay for quality.

The second area of concern is political. The proponents of both bills consider the political issues of visibility and effectiveness as perhaps their primary rationale for the separate department. The Senate bill states, "presidential and public consideration of issues relating to education is hindered by the present organizational position of education programs in the executive branch of the government." The Administration's language is more precise, "... there is no single full time federal education official directly accountable to the President, the Congress and the people." The existing structure of HEW seems to bear this out. It is not clear who the top education official in the country is or who assumes full time public responsibility for education. The image problem is even more obvious for higher education. Not only is there no individual which has even a titular position for higher education leadership, but there is no office or association which assumes full responsibility. It is argued that those who are usually thought to hold this position, i.e., Secretary for HEW, Assistant Secretary for Education, Commissioner for Education, really don't have education's concerns represented sufficiently on the executive level. This is compounded by President Carter's admission that education matters take less than 1% of his time and at cabinet and policy meetings he rarely hears the perspective from education. Both bills try to rectify this by the establishment of a cabinet Secretary of Education, Undersecretary (intergovernmental relations), and an Assistant Secretary for Postsecondary Education. The rationale obviously is that the proposed structures will establish a line authority that will not only increase education's visibility to the Congress and the Executive branch, but will also be more responsive and responsible to the education community and the public.

Underlying the structural changes and the political verbiage lies a solid policy position. The position is that politics influences education substantially, and consequently, there are some requisite political procedures which should be followed. Power is the end result, so education can best accommodate its interests by accumualting as much power as possible. The bills' architects suggest that the best way to do this is centralization. As was seen earlier, centralization encourages efficiency (so the theory goes), however it also enhances political power. The present system does not accrue power because power is structurally dissipated among agencies, sub-cabinet level bureaucrats, deputy assistant secretaries, etc. Observers of the history of Congress will note that this same dissipation of power occurred when authority was dissipated through the committee system. There is a clear correlation of Congressional power with the number and structure of subcommittees. As the number of subcommittees increases, the power of Congress inversely decreases. Similarly, when Congress begins to centralize with fewer layers of power and more easily identifiable authority figures and committees, power begins to increase. The same reasoning applies to education. The idea is to take away the present disjointed and diffused structure and establish clear channels of operation and authority. This will enable education authorities to establish the means of developing strategy and, ultimately, policy from an effective power base. Having established a cohesive power base, the proper educational authority figures can then begin to effectively lobby for education with the Congress and the President. Only on this level can the interests of education be best served.

The opponents of centralization of power maintain that this concentration of power would defeat many educational goals. Their positions represent the views of many educators who feel that there is something unsettling about the association of education with politics. The fear is that

education policy will become dependent upon political decisions and not educational decisions. It brings up the question of whether politics produces policy or policy produces politics. Whichever the case, it is felt that education usually benefits very little from the political decision-making mechanism. In this process, educational priorities often come after political priorities. This, of course, is true on any level,but it is especially true on the federal level. If political decisions are going to be made, then it makes sense to have them made close to the institutions themselves, ideally on the local or state level. A centralized bureaucracy is about as far from the goal of local decision-making as possible. In fact since the ideal is more localized responsibility, than the advantageous strategy would be more decentralization.

Even if the opponents of the bills could be convinced that a centralized federal bureaucracy would help education, there is no guarantee that such a proposed structure would have the impact its supporters claim. Theoretically, taking education out of HEW could have a deleterious effect. For example, many of the appropriations for education are successful partly because of their association with Health and Welfare programs. Political decisions were positively affected by this relationship, and if some education bills were forced to stand by themselves, they might not be passed with as much ease. The same argument is used by those who feel that a separate department might strain friendly and effective relationships with the labor organizations. It is also feared that the powerful House Education and Labor Committee could conceivably be split. Although there is nothing in either bill which would require or even encourage this split, and there is no direct parallel between Congressional committee structure and the structure of the Executive branch, it underscores the fears of many who are not sure what possible ramifications centralization might have.

This final point captures the essence of the anti-centralization forces. Centralization, as a social policy tool, has not proved itself as being a consistent achiever of desired ends. Nor is there any philosophical or historical precedent to ensure that education would be a beneficiary of such restructuring. As a matter of fact, education has fared pretty well without a federal spokesperson or a centralized bureaucratic structure, so it would seem inadvisable to try another system. Granting the fact that the present infrastructure is not conducive to direct participation by education on the Executive level, it may be the case that education doesn't really need cabinet level attention. If that is so, then the best strategy and policy is to strengthen the present system. Decentralized power might be all the power that education requires at this point. Perhaps the lower visibility in politics that the existing structure now offers is, in the end, the most powerful.

The final policy issue to be discussed is considered by many to be the only, or at least primary, point of contention in the debate. This is the territorial question of the actual federal role in education if the department is established. Unfortunately, charges and countercharges tend to dominate the debate and very little meaningful discussion occurs. It is a complex issue and separate, distinct points are often lost in the confusion. Basically, the debate focuses on the probable impact the new department would have on local and state policies. The opponents claim that a new centralized bureaucracy will inevitably lead to a federal intrusion into areas where it doesn't have Constitutionally mandated authority. Even accepting the arguments from the proponents that a new centralization or locus of education responsibility would improve matters, there is still no assurance that eventually the proposed management and "power" status won't become a total unsurption of all educational authority. While this argument is certainly valid, the problem is that it fails to make note of a crucial distinction. That is, there is the fundamental difference between federal administrative control of education and national education policy. In terms of policy, the latter issue is the far more important and, ironically, both sides agree on it. However, the debate, more often than not, centers on the issue of "control" and it invariably carries over to the idea of a national education policy. This transition obfuscates the distinctive features of both policy issues. Arguments, pro and con, reveal how important this distinction is.

The bills' opponents ground their arguments in the 10th Amendment of the Constitution, which says that all responsibilities not officially designated to the federal government belong to the states or the localities. Since education is not mentioned, the argument follows that it therefore becomes the responsibility of the states. This is obviously true, but the issue becomes cloudy when it is subsequently claimed that the federal government therefore, has no "right" in education. It is this final assumption which sets the state for confusion. Consequently, when the proponents are presented with this argument in terms of "rights", they retort that they have a "right" in educational matters, since the government pours in billions of dollars of categorical and individual aid to schools, and in some individual cases, is almost totally responsible for keeping these institutions afloat. This argument that the government, too, has a "right" or legitimate role in education, is equally valid.

The ideal situation now, of course, would be a compromise where both proponents and opponents agree on a satisfactory role. However, such a compromise is not likely in spite of the language in both bills to assuage the most pronounced fears of the skeptics. The rationale used by the Senate bill is that the federal government's role is a "legitimate but restrained one." The President's bill echoes this theme and stresses the federal role of being supportive of "education policies and decisions that are properly the responsibility of states, localities, and public and private institutions." Both bills are very conscious of the federal-local relationship debate. In fact, they state plainly that it is not the intention of the new department to intervene in the affairs of the schools or states. They envision their role as pretty much the same as it is presently: encouraging equal opportunity for individuals who are disadvantaged and the improvement of education through research awards and categorical grants. From their point of view, there is no design to become involved with institutional policies or programs. The ideal is that the federal responsibilities would be exclusively complementary of existing state and local policies, and sometimes even protective of them. The President's bill is even more forceful than the Senate's on this point and the wording is in the form of a strict prohibition against federal in-

tervention except under authorization of law. The wording is such that any encroachment by the new department could conceivably be the subject of a law suit. The provisions on the federal-state relationships for both bills are in Section 103 under Title I.

Opponents argue that words are not enough and eventually the federal role will expand inexorably into the states' and localities' sector. The new department will continually evolve into a bureaucracy that assimilates program after program until, eventually, control is establishd in most areas of education. To support this argument, the ever increasing amount of paperwork, rules, regulations, and compliance reviews are pointed to as examples of federal intervention and means of controlling education. The sponsors of the bills reply that these requirements are geared solely towards the higher ideal of equal opportunity and have nothing to do with institutional education policy. This is of little comfort to the academic administrators who have been coping with present requirements. For them, the spectre of federal, administrative domination is every bit as real. The bottom line of this debate is essentially a disagreement over the definition of "control." Supporters of the bills maintain that the goals of a new department are merely administrative and critics contend that intentions are irrevelant because the final result will be more federal control. Both sides seem to have an idea of what the future will be like and their final positions rest upon these contradictory speculations.

Speculative guessing is again the basis for a more serious and profound disagreement. That disagreement is based on the belief that federal control will lead to a national education policy. Both sponsors and critics argue that such a nationalized system would be a most abhorrent state of affairs. Nevertheless, the ever-present fear is that even with a minimal amount of control or centralized administration, a centralized policy is not far down the road. This is an important point because the implicit assumption operating here is that the administrative process has a direct causal effect on policy. That is, the centralization of administrative detail will necessarily entail a conformity in education policy. It is virtually impossible to evaluate how justified this concern is. An examination of both bills, however, discounts the likelihood of any kind of nationalized policy. A non-partisan, objective interpretation requires the conclusion that there is nothing in the *formulation* of either piece of legislation which would encourage this kind of centralized policy planning office for education.

The impact of the bills will probably be mostly self-contained and, should there be any long-term tendency towards nationalization of policy, there are internal provisions (especially in the President's) to shortcut development. The new department, according to its supporters, is not intended to provide policy control over educational matters. Even if it could establish control, its power is significantly weakened by the fact that many major policy-wielding programs will not be included in the new department. They will remain in their parent agencies with their own independent policies. This breadth of educational policy offices coupled with the fact that there is no design in the bills for a centralized planning authority, should mitigate to some degree the possibility of uniformity or nationalization in educational programming.

Nevertheless, the issue is a major concern and will be a matter for speculation until there is a legislative resolution. In the meantime, it is safe to say that both proponents and opponents have done an effective job of overrating the actual impact the department will have. A close reading of both bills show that the hopes and intentions of the new department are quite modest. The articulated goals are to improve coordination and efficiency of educational programming, increase the political power of education on the federal level, and elevate education in the minds of people to a higher priority.

Accompanying this text are charts and diagrams of major points in both bills concerning purposes and structures. These have been greatly simplified and codified in the interests of easy comparison.

RATIONALE (TITLE I)

S210
Purposes

- Enable education to receive the appropriate emphasis at federal level.
- Continue and strengthen the Federal commitment to equal educational opportunity for every individual.
- Supplement and complement the efforts of states, local, public, and non-public educational institutions to improve quality of education, while acknowledging the rights of these institutions to formulate their own policies.
- Encourage the increased involvement of parents, students, and the community in the decision-making process.
- Enable the Federal Government to coordinate education activities and programs more effectively.
- Provide assistance in support of basic and applied education research, collect and analyze information on the progress and condition of education in the United States, work with the state, local, and institutional authorities to implement the findings of such research at the local level.
- Provide support to educational agencies and institutions with respect to the simplification of the process of disposal of Federal funds as well as reduction of unnecessary duplicative burdens and constraints, including unnecessary paperwork on the recipient of Federal funds.

H.R. 2444
Purposes

- Strengthen Federal commitment to equal educational opportunity for every American.
- Support state, localities, public, and private institutions in carrying out their educational responsibilities.
- Promote improvements in quality and usefulness of education through federally supported research, evaluation, and the sharing of information.
- Improve management and efficiency of Federal education activities.
- Increase accountability of Federal education programs to the President, the Congress, and the public.
- Encourage the involvement of the public, parents, and students in Federal education programs.
- Improve the coordination of Federal educational programs.

Offices/Officials (Title II)

S. 210

Principal Officers:

Secretary
Undersecretary (intergovernmental relations)
Assistant Secretary — Special Education and Rehabilitative Services
Assistant Secretary — Elementary/Secondary
Assistant Secretary — Postsecondary
Assistant Secretary — Occupational, Adult, Community Education
Assistant Secretary — Educational Research and Improvement
2 additional Assistant Secretaries (one for Planning and Evaluation and the other is unspecified)
Director of the Office for Civil Rights
Administrator of Education for Overseas Dependents
General Counsel
Inspector General

Total — 13 Executive level officers

H.R. 2444

Principal Officers:

Secretary
Undersecretary (intergovernmental relations)
Assistant Secretary — Elementary/Secondary
Assistant Secretary — Postsecondary
Assistant Secretary — Research and Improvement
Assistant Secretary — Civil Rights
2 additional Assistant Secretaries (unspecified)
5 Officers (one is for the Office of Overseas Dependents, and four are unspecified)
General Council
Inspector General

Total — 15 Executive level officers

Programs (Title III)
Transfers to Department of Education

S. 210

Education division, HEW

Office of Civil Rights, HEW

Special Institutions: Howard University, Gallaudet College, the American Printing House for the Blind, and the National Institute for the Deaf

Health professions student loans

Nursing loans and scholarships

Overseas Dependents School, Department of Defense

The Graduate School, Department of Agriculture

Certain science education programs, National Science Foundation*

Telecommunications Demonstration Program, HEW

The College Housing Loan program, Housing and Urban Development

Law Enforcement Education, Department of Justice

Migrant education programs, Department of Labor

Vocational Rehabilitation Program, HEW**

Total Budget Authority — $14,332,533,000

Total Staff — 15,416

Total Programs — 167

H.R. 2444

Education division, HEW

Office of Civil Rights, HEW

Special Institutions: Howard University, Gallaudet College, the American Printing House for the Blind, and the National Institute for the Deaf

Health professions student loans

Nursing loans and scholarships

Overseas Dependents School, Department of Defense

The Graduate School, Department of Agriculture

Certain science education programs, National Science Foundation*

Telecommunications Demonstration Program, HEW

The College Housing Loan program, Housing and Urban Development

Law Enforcement Education, Department of Justice

Migrant education programs, Department of Labor

Total Budget Authority — $13,441,707,000

Total Staff — 16,397

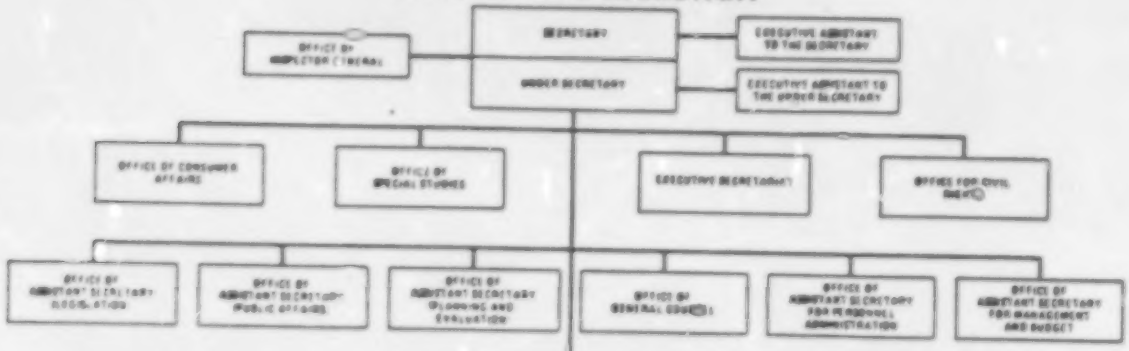
Total Programs — 158

* There will be a few differences in these programs. The rationale for inclusion or exclusion has been that research oriented programs stay in NSF, while the education oriented programs move to the new department.

**The inclusion of this program is S. 210 is the major difference between the bills.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY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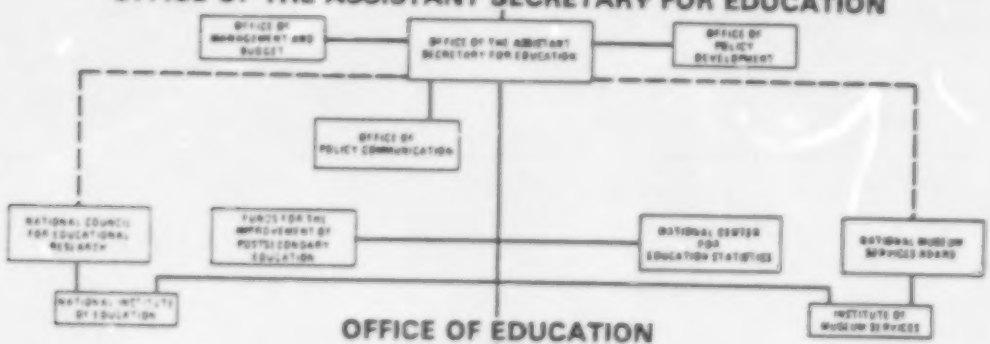
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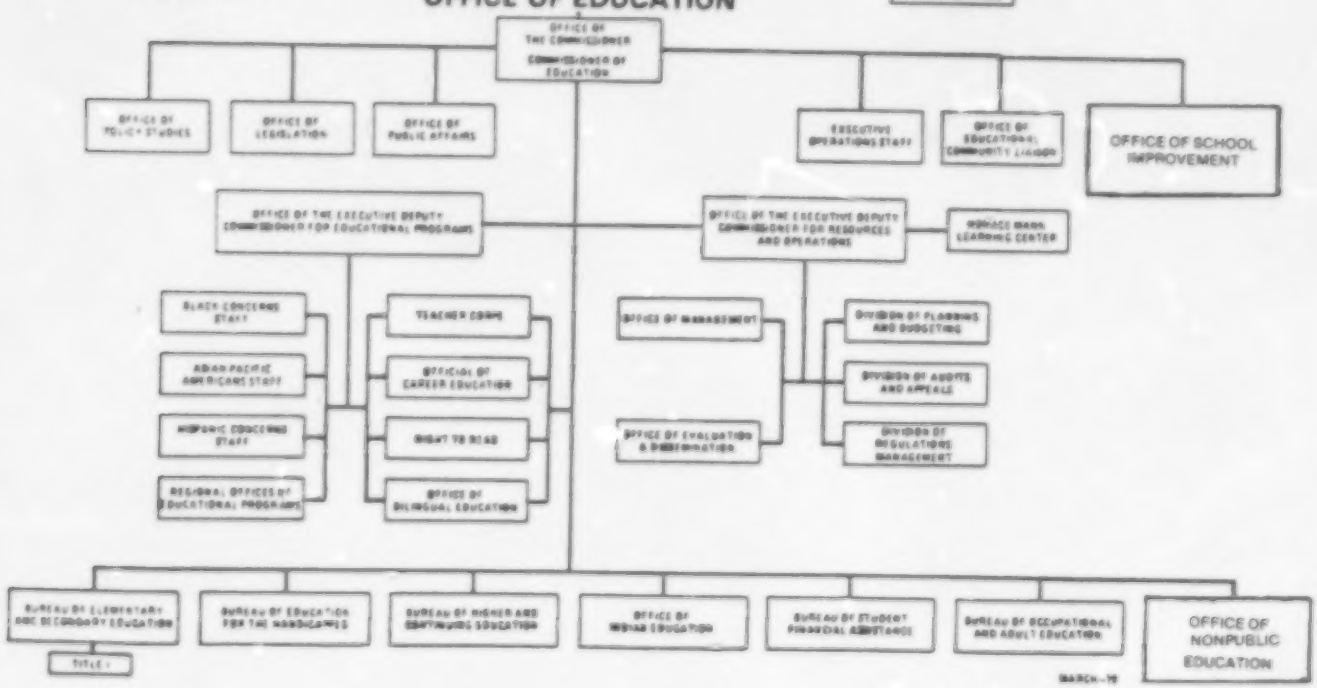
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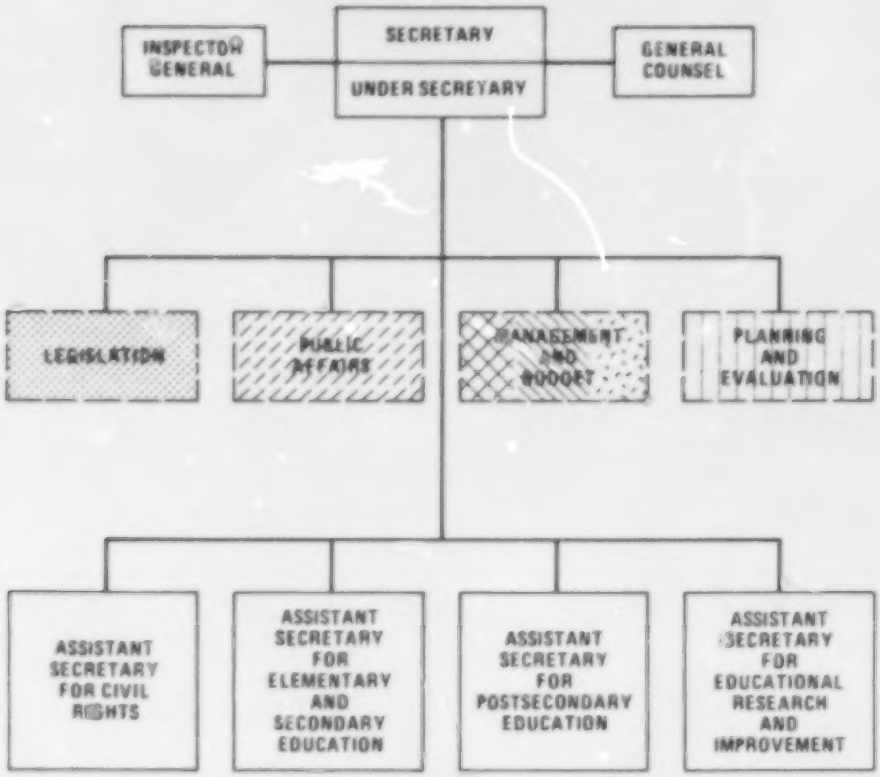
DIVISION OF AUDITS AND APPEALS
DIVISION OF REGULATIONS MANAGEMENT
BUREAU OF ELEMENTARY AND SECONDARY EDUCATION
TITLE I
BUREAU OF EDUCATION FOR THE HANDICAPPED
BUREAU OF HIGHER AND CONTINUING EDUCATION
OFFICE OF INDIAN EDUCATION
BUREAU OF STUDENT FINANCIAL ASSISTANCE
BUREAU OF OCCUPATIONAL AND ADULT EDUCATION
OFFICE OF NONPUBLIC EDUCATION
MARCH-79

DEPARTMENT OF EDUCATION (PROPOSED)* STRUCTURE OF STAFF FUNCTIONS



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LEGISLATION AND CONGRESSIONAL AFFAIRS

PERSONNEL ADMINISTRATION

PUBLIC AFFAIRS

MANAGEMENT AND BUDGET

PLANNING, EVALUATION AND POLICY DEVELOPMENT

EXECUTIVE SECRETARIAT

THE ADMINISTRATION'S BILL PROVIDES THREE ADDITIONAL EXECUTIVE LEVEL POSITIONS FOR THE OPERATION OF THE OVERSEAS DEPENDENTS SCHOOLS AND FOR OTHER STAFF AND PROGRAM OFFICES THAT THE SECRETARY MAY DESIGNATE.

MARCH-79

*As proposed in H.R. 2444

4

Legal Affairs and Higher Education

An overview of Major Legal Decisions Affecting Higher Education in the Year

Higher Education and the Law: Annual Review 1978

Frank Gerry
Edward P. Kelley, Jr.

To begin a review of the most significant legal developments of the past year by noting a trend towards increased litigation involving higher education may appear to belabor the obvious. However, these are indeed litigious times and, with increasing frequency, members of the higher education community seek redress of their grievances before our state and federal courts. In researching this article we have noted two closely related trends: the first is increased judicial involvement in postsecondary education; the second, an expansion in the number of areas of collegiate operation that have come under judicial scrutiny.

With these trends in mind we sought to identify general areas and specific cases occurring in the past year which have significant impact upon higher education. This review is not offered as an in-depth analysis but rather is written for the person who is not an attorney and who is interested in the developing field of collegiate law. Additionally, no claim for exhaustive review is made. Cases for review were selected based upon two criteria: departure from previous decisions or the breaking of new ground.

For purposes of review, we will analyze the cases within seven categories: admissions, students, athletics, discrimination, mandatory retirement, collective bargaining and fringe benefits. It should be noted that the groupings represent an arbitrary classification by us, and in several instances a case may, in fact, involve several subjects.

Admissions

By far the most significant admissions case, and indeed the most publicized case decided in 1978 was *Bakke v. Regents of the University of California*.[1] In this action brought by Alan Bakke, the University of California, Davis, Medical School's admissions program is challenged as preferential. The twice rejected white male claimed that the university's affirmative action plan used to select a percentage of its entering class violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964[2] by virtue of discrimination based upon race.

In a multiple opinion decision still being analyzed and debated, the Supreme Court found that Bakke had indeed been discriminated against but also stated: "The state has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin."[3] Thus, it is argued by many that affirmative action programs meeting the competitive criteria are valid and remain standing, while those establishing numerical quotas or percentages must fall under the *Bakke* test.

In recent action the Supreme Court has agreed to hear the case of *Cannon v. The University of Chicago*.[4] This case raises several interesting issues. The plaintiff is charging sex discrimination in her denial of admission to medical school. At issue is whether an individual can bring suit under Title IX of the Education Amendments of 1972.[5]

Of additional interest in the area of admissions were several cases involving handicapped students. The prohibition against discrimination on the basis of handicap with respect to participation in federally funded programs is set out in federal regulations[6] adopted under authority of the Rehabilitation Act of 1973.[7] Of particular note in this area is the case of *Davis v. Southeastern Community College*.[8] Here, an institution in South Carolina had rejected an applicant with a hearing impediment on the grounds that she could not safely perform the clinical training program required for the degree of registered nurse. The Circuit Court of Appeals reversed a lower court and ordered the college to reconsider Davis' application on academic grounds "without regard to her hearing disability" affording Davis the protection of an otherwise qualified handicapped person under the Federal Rehabilitation Act. The Supreme Court has recently agreed to review this decision which potentially affects one of every eleven Americans as well as numerous federally funded programs in which handicapped persons may participate.[9]

In a related case, *Barnes v. Converse College*[10] the Federal District Court for South Carolina required a private college to provide, at its own expense, a sign language interpreter to enable a deaf student to participate in graduate course work. The Federal District Court for the Southern District of New York has also spoken to the issue of admissions for handicapped persons in *Dole v. New York University.*[11]

Students

Board of Curators of the University of Missouri v. Horowitz[12] involved the dismissal of a medical student for deficiencies in clinical performance, peer and patient relations, and personal hygiene, despite excellent grades. An appeals court decision held this dismissal would make future employment in medicine most difficult or impossible and by virtue of the dismissal the student would be stigmatized within the profession. The appeals court concluded that the student was entitled to procedural due process, including the opportunity to rebut unfavorable evidence. On appeal the Supreme Court held that even assuming the student had been deprived of liberty or a property right, the student had been afforded at least as much due process as required by the Fourteenth Amendment. In its decision the Court made a distinction between academic judgment and disciplinary cases. The Justices concluded that the procedural tools of judicial review were more readily applied to administrative decision making rather than academic evaluations.

Student rights, within the context of a disciplinary hearing, were addressed in *Gabrilowitz v. Newman.*[13] In this case a student who was charged with assault with intent to commit rape was called before a college disciplinary hearing on the charge just weeks before he was to receive his degree. The First Circuit Court of Appeals decided that the student had a right to have an attorney present for consultation and advice during his hearing, basing its decision upon the student's privilege against self-incrimination. In its decision the appeals court framed a limited role for the attorney. Legal counsel was to safeguard the student's rights *vis a vis* any future criminal proceeding and was not to attempt to affect the outcome of the college's disciplinary hearing.

The issue of in-state tuition was again the subject of litigation in 1978, however, in *Elkins v. Moreno*[14] the plaintiffs were non-immigrant alien students. In this case, the students, each of whom was the dependent of a parent holding a "G-4" visa, (i.e., a visa granted to all officers or employees of international treaty organizations and immediate family) brought suit against the University of Maryland seeking "in-state" status for tuition purposes. The Supreme Court held that "G-4" aliens have a legal capacity to change their domicile but that the question of whether those individuals were residents of Maryland was purely a matter of state law. The Court did hold that one must allow those seeking to meet the residency test to present facts which have a clear bearing on the case.

The rights of veterans as students was one issue in *Cleveland v. National College of Business.*[15] In this complex case, the main issue was the authority of the Veterans Administration to disapprove particular courses. The VA administrator was required by statute to disapprove a benefits application for courses in which more than 85% of the enrolled students had tuition or fees paid by the VA or other federal agency. In addition, statutes required the VA to disapprove the enrollment of an eligible veteran in a course that had been offered by an institution covered by the act for less than two years. In its opinion, the Supreme Court found the statutes a proper exercise of Congressional authority and related to appropriate legislative objectives.

In addressing the issue of student's rights, the Court found no violation of substantive due process resulting from an alleged interference with freedom of educational choice. In addition, the Court found no procedural due process violations in that the affected veterans were not given a hearing relative to the waiving of the above requirements.

Athletics

In *University of Denver v. NCAA*[16] the university and several student athletes sought to enjoin the NCAA from imposing sanctions on the hockey team and other athletic teams. The Circuit Court of Appeals held that while students might have an interest in participating in intercollegiate athletics, this interest did not rise to the level of the constitutionally protected property or liberty interest sufficient to invoke due process requirements. (It should be noted, however, that the opinion of the Federal District Court in the *Denver* case[17] suggested that revocation of an athlete scholarship would infringe upon property and liberty interests and thus require the safeguard of due process.) The Circuit Court found that the sanctions imposed did not include revocation of a scholarship and therefore the NCAA did not unconstitutionally discriminate against the university by placing it on probation. It would appear this case departs from earlier decisions which did find student interest in athletics to be similar to property interests and require due process.[18]

Discrimination

The issues of race and sex discrimination as well as the jurisdiction of various federal agencies were the subjects of considerable litigation during the past year.

In *Scott v. the University of Delaware*[19] the Federal District Court upheld the University's requirement of the Ph.D. or its equivalent for appointment and/or promotion to most positions of assistant, associate, and full professor. The court found that while the degree requirement had a disparate impact upon blacks, it ruled that, given the university's interest in research and graduate studies, the requirement of a Ph.D. did not violate Title VII of the Civil Rights Act of 1964.[20]

Lewis v. Delaware State College[21] also involved, to some extent, the issue of job relatedness. In this case the Director of Women's Residence Halls challenged the college's decision not to renew her contract because she had recently given birth to an illegitimate child. The plaintiff alleged this action violated her rights to due process, equal protection, and personal privacy. A Federal District Court granted a preliminary injunction requiring reinstatement because in the court's eyes there was a substantial likelihood that she would be successful on the merits in future litigation.

The jurisdiction of a federal agency and the right of individuals to bring suit were both issues in *Seattle University v. H.E.W.*[22] The university challenged an HEW investigation of alleged sex discrimination in the awarding of faculty salaries and refused to comply with HEW demands for information and records. In this case, which also involved Title IX claims, the Federal District Court awarded a permanent injunction, halting the investigation. The injunction was granted on the grounds that the statute which prohibits sex discrimination in federally funded programs applies to only those individuals for whom the programs were established, rather than personnel who are employed to staff such programs. At Seattle the program in question was to benefit students, none of which were involved in the complaint. Further, the court found the ban on discrimination in federally funded programs to be program specific. That is, the law did not extend to all the institution's employees. Hence, the court concluded that HEW had exceeded its statutory authority in arguing that it had the power to reach any act of sex discrimination alleged by any employee engaged in any institutional program.

Jurisdiction of a federal agency was also at issue in *EEOC v. Mississippi College*[23] wherein the District Court held that the First Amendment prevents EEOC from investigating a sex discrimination charge at a college operated by a religious organization. The college involved is owned, controlled, and operated by the Mississippi Baptist Convention, and the overwhelming percentage of its faculty and students are Baptists. The court found Congress specifically guaranteed First Amendment rights to the free exercise of religion by writing into Title VII an exemption for religious institutions.[24]

The case of *Powell v. Syracuse University*[25] is of interest in that it may provide insights into judicial thinking relative to issues of academic judgment. The court rejected a claim of discrimination by a black female faculty member over the denial of tenure. However, the court notes that academic freedom does not embrace the freedom to discriminate and, therefore, future jurists should no longer follow a firm policy of deferral to academic judgment. Yet, in the same opinion courts are urged to continue to be wary of excessive intervention in university affairs. The court does, however, suggest the judiciary should be more active in providing a forum for the litigation of higher education employment discrimination cases.

Sex discrimination and academic promotion were also at issue in *Sweeney v. Keene State College*.[26] Plaintiff twice applied for promotion to the rank of full professor and was rejected by all male review panels. In 1976 the plaintiff was promoted to full professor and eventually brought suit

alleging sex discrimination in the earlier rejections. In litigation, both the trial and appeals court found the plaintiff was the victim of discrimination and ordered promotion and back pay retroactive to 1975, the second year she applied for full professor. The case is of interest in that it is the first involvement of a federal court in the timing of promotion rather than the decision to promote itself. In addition, *Sweeney* is the first recorded case where a plaintiff prevailed in a sex discrimination case involving tenure and promotion at the four-year college level.

In a controversial ruling the Supreme Court, by a one-vote margin decided to remand the case back to the District Court for reconsideration in light of the Court's earlier ruling in *Furnco* where it stated an employer accused of civil rights violations need only "articulate some legitimate non-discriminatory reason" for the conduct. The Court found that the lower court in *Sweeney* had placed "a heavier burden on the employer than *Furnco* warrants."[27]

The last discrimination case of note is that of *Craig v. Alabama State University*.[28] In this action a predominately black state university was found to have engaged in a pattern and practice of discrimination in hiring, promotion and tenure towards white faculty, clerical, support staff and administrators. The plaintiffs were awarded attorneys' fees and damages.

Davis v. Bucher[29], while not a discrimination case has a number of implications in that direction. The Federal District Court held that persons with histories of drug use, including present participants in methadone maintenance programs, are "handicapped individuals" within the meaning of the Federal Rehabilitation Act of 1973. It would be a violation of the equal protection clause of the Constitution to exclude from employment applicants with drug abuse histories without any consideration given to the merits of each individual case. In addition, if denial of consideration is given to applicants for employment in a program receiving federal financial assistance, such action also constitutes a violation of the Rehabilitation Act.

Mandatory Retirement

The debate continues over the 1978 Amendments to the Age Discrimination in Employment Act which raised the upper age limit of mandatory retirement for non-federal employees from 65 to 70, tenured college and university faculty members were exempted from coverage until July 1, 1982.[30] The Senate Committee Report justified the exemption as facilitating the hiring of younger professors, particularly women and minorities. The committee also noted that the exception would help to alleviate the financial burden, on already hard-pressed educational institutions, of having to retain higher paid senior employees for the additional period mandated by the Act.[31] The rationale given by the Senate Committee for the higher education exemption underscores the reasons why, as a recent commentator accurately noted, the raising of the retirement age is second only to *Bakke* in arousing emotional furor within the educational community.[32] Ms. Laura Ford's review and our observation convince us that even after the retirement age is raised to 70 for college and university faculty it is likely that there will be challenges from septuagenarian faculty resisting mandatory retirement. In fact, the most recent Federal Court of Appeals decision regarding mandatory retirement involved a 70-year-old teacher who argued that compulsory retirement at age 70 violates the equal protection clause of the Constitution and that it creates an irrebuttable presumption of incompetency based on age.[33] Plaintiff Palmer sought the right to a hearing in order to determine her competency as a kindergarten teacher. Although the case seems somewhat removed from higher education, the reasoning of the court is important and may be applicable to higher education. The Palmer Court refused to follow a 1977 decision by the Seventh Circuit Court of Appeals in a case involving an Illinois high school teacher who was required to retire at age 65. In the Illinois case the Federal Court of Appeals remanded the matter to the District Court requiring the state to demonstrate the relationship between the attainment of the age of 65 and school teachers' fitness to teach, assuming arguendo that the purpose of the requirement was to remove unfit teachers. The court stated its rationale for taking action in the following manner:

> No evidentiary proof is necessary to note that teaching is a profession in which mental skills are vastly more important than physical ability. We cannot assume that a teacher's mental facilities diminish at age 65. On the contrary, as suggested by plaintiff's offer of proof, much in the way of knowledge and experience, so helpful to the educational profession, is often gained through years of practice.[34]

The Palmer Court criticized this opinion because it "too narrowly conceives the possible rational basis for a compulsory retirement statute." The court went on to state:

> Unrelated to any notion of physical or mental fitness, a state might prescribe mandatory retirement for teachers in order to open up employment opportunities for young teachers — particularly in the last decade when supply has outplaced demand, or to open up more places for minorities, or to bring young people with fresh ideas and techniques in contact with school children, or to assure predictability and ease in establishing and administering pension plans. A compulsory retirement system is rationally related to the fulfillment of any or all of these legitimate state objectives.[35]

Both the *Palmer* decision and the earlier *Gault* decision are on appeal

to the Supreme Court. Since the Court's earlier decision upholding mandatory retirement laws dealt with uniformed police[36], the Court might well have to decide the issue again with respect to white collar occupations. The decision in *Palmer* to uphold the mandatory retirement laws indicates the strong majority view in the federal and state courts especially in regard to higher education.

Collective Bargaining

Clearly the most important case relative to faculty unionization is that of *NLRB and Yeshiva University Faculty Association v. Yeshiva University*.[37] The case arose when the university refused to bargain with its faculty association and alleged the NLRB erred in its earlier findings. The university argued that due to the considerable role in governance, hiring, promotion and establishment of academic policy, faculty were more appropriately viewed as managerial, policy setting personnel and not employees under the National Labor Relations Act.

The 2nd Circuit Court of Appeals found that the faculty's influence over the University was so pervasive that they were in effect operating the college and therefore could not be defined as "employees" under the Act. The case raises major questions as to the future of collective bargaining in mature independent colleges and universities. The NLRB has recently petitioned the Supreme Court for a review, and the Court has granted certiorari.

Fringe Benefits

In a non-college case of far reaching implications, the Supreme Court has found the City of Los Angeles guilty of sex discrimination in its employee pension plan. The case, *City of Los Angeles v. Manhart*[38] involves rates of employee contribution.

The employers, the Los Angeles Department of Water and Power, had an established retirement plan to which each empoyee was required to make a monthly contribution. Using sex-segregated mortality tables, the department determined that the cost of a pension for the average female would be greater than that for a similarly situated male. The department required its female employees, in order to receive equal benefits, to contribute at a 14.84% higher rate than its male employees.

The Court, in *Manhart*, found the higher rates for women were in violation of Title VII even though women, as a class, live longer than men. The Court reasoned that since Title VII prohibits discrimination against an individual, no class generalizations, whether statistically accurate or not, may be used to classify employees. The Court did not rule on whether or not the department could charge men and women equal rates, but provide unequal benefits. However, previous EEOC guidlines and recent Department of Labor regulations indicate that such a plan would also violate Title VII.

Summary

In sum, little by way of definitive recommendation can be made to the college and university community based on last year's judicial activity affecting higher education. As is not uncommon in these matters, the cases turn as much on their facts as on the law involved. What can be said is that the actions of college and university officials may be subjected to close scrutiny, most particularly when such actions impact individual rights or protected status resulting from legislation. Of particular import may be the objective nature whereby the institution examines its own behavior. This issue is particularly telling in cases involving procedural due process. In addition to examination of behavior, observance of time limits, proper notification and the like, the courts have indicated a willingness to examine the types of evidence employed by an institution to support a particular action. Clearly, that documentation and testimony which is objective in nature will carry greater weight than that which may be seen as self-serving and hastily constructed.

Institutional and societal goals and the relationship between the goals and specific action may well continue

to be an area of judicial interest. The *Bakke* case can be seen as an examination of the societal goal of diversity and increased minority opportunity as reflected in a particular institutional action, namely the admissions program. In earlier years the institutional goal and its relationship to the action taken were deciding factors in several retrenchment cases. The *Bakke* case also addresses the last and most complex area of judicial interest, the relative weight of the institutional and social need served by the goal and action, balanced against the protected rights and felt needs of individuals.

Hence, it would appear that as higher education enters the eighties, a complex set of social forces ranging from demographics to increased interest on the part of external parties augers an increase in litigation involving citizens, employees, agencies, students and institutions of post-secondary education.

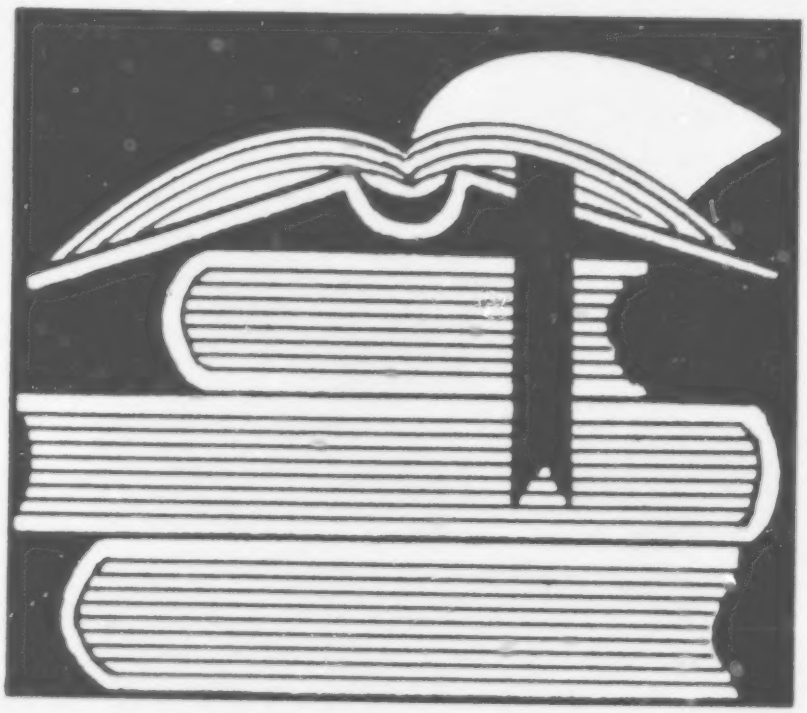
BOOKS ON COLLEGES AND THE LAW . . .

ONE OLD . . .

Aiken, Ray J., John F. Adams and John W. Hall, *LIABILITY, Legal Liabilities in Higher Education: Their Scope and Management*. Washington, D.C.: The Association of American Colleges and the National Association of College and University Attorneys, 1976.

ONE NEW . . .

Kaplin, William A., *The Law of Higher Education: Legal Implications of Administrative Decision Making*. San Francisco: Jossey-Bass Publishers, 1978.



FOOTNOTES

1. 98 S. Ct. 2733, 17 FEP 1000 (1978).
2. 42 U.S.C. §§ 2000 *d et seq.*
3. 17 FEP at 1022.
4. 559 F. 2d 1063 (7th Cir. 1977), *cert. granted* 46 U.S.L.W. 3799 (1978).
5. 20 U.S.C. §§ 1681 *et seq.*
6. 45 C.F.R. §§ 34.
7. 29 U.S.C. §§ 706 (b).
8. 574 F. 2d 1158 (4th Cir. 1978).
9. 47 U.S.L.W. 3451 (1979).
10. 436 F. Supp. 635 (D.S.C. 1977).
11. 442 F. Supp. 522 (S.D.N.Y. 1978).
12. 435 U.S. 78 (1978).
13. 582 F. 2d 100 (1st Cir. 1978).
14. 435 U.S. 647.
15. 435 U.S. 213.
16. 570 F. 2d 320 (10th Cir. 1978).
17. 417 F. Supp. 885 (D. Colo. 1976).
18. *See, e.g., Regents of the University of Minnesota v. NCAA*, 442 F. Supp. 1158 (D. Minn. 1976).
19. 17 FEP 1486 (1978).
20. 42 U.S.C. ** 1981 *et seq.*
21. 455 F. Supp. 239 (D.C. Del. 1978).
22. 16 FEP 719 (D.C. Wash. 1978).
23. 17 FEP 931 (1978). 42 U.S.C.A. § 2000(e)(0).
24. 42 U.S.C.A. * 2000 (c) (1).
25. 580 F. 2d 1150 (2nd Cir. 1978) cert. denied. 18 FEP 965 (1978).
26. 569 F. 2d 169.
27. 18 FEP 520, 521 (1978).
28. 451 F. Supp. 1207 (M.D. Ala. 1978).
29. 451 F. Supp. 791 (E.D. Pa. 1978).
30. Pub. L. No. 95-256, 92 Stat. 189 § 63 (1978).
31. S. Rep. No. 95-493, 95th Cong., 1st Session 8-9 (1977) reprinted in 1978 U.S. Code Cong. & Ad. News, 976.
32. Ford, L. "The Battle Over Mandatory Retirement," Educ. Record, Vol. 59, No. 3, p. 204 (Summer 1978).
33. *Palmer v. Ticcione*, 576 F. 2d 459 (2nd Cir. 1978).
34. *Gault v. Garrison*, 569 - 2d 993, 16 FEP 245, 248 (1978).
35. *Palmer*, 576 F. 2d at 462.
36. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976).
37. 582 F. 2d 686 (2nd Cir. 1978).
38. 435 U.S. 702 (1978).

5

The States and Higher Education

An Overview of Major Issues in Higher Education of Concern to the States and an Article on Residency for Tuition Purposes

1978 Major Issues of Concern to State Higher Education Agencies

What are the states concerned about in higher education? The following tabulation was compiled by the staff at the Education Commission of the States from the annual reports of state higher education agencies.

Order	Issue	Frequency of Occurrence (Number of States) 1978	1977	Order 1977
1	Student Aid	33	35	1
2	Appropriations	27	34	2
3	Master Planning	22	29	4
4	Community Colleges	21	23	6
5	Program Review	21	20	10-11
6	Capitol Outlay	20	24	5
7	Continuing, Adult, Off-Campus Education and Lifelong Learning	20	21	8-9
8	Enrollments	20	31	3
9	Faculty Salaries and Benefits	16	20	10-11
10	Medical Education	16	16	14-16
11	Accreditation, Licensure, Approval	15	17	12-13
12	Budget Review and Process	15	16	14-16
13	Private Institutions	15	16	14-16
14	Change in Coordinating and Governing Structures	14	17	12-13
15	Graduate Education and Research	14	10	20-21
16	1202 Commissions	13	21	8-9
17	New Programs	13	8	27-30
18	Nursing Education	13	10	20-21
19	Management Information Systems	12	11	18-19
20	Education Information Centers	11	—	—
21	Reciprocity	11	4	42-44
22	Tuition and Fees	11	22	7
23	Libraries	10	9	22-26
24	Veterinary Medicine	10	5	40-41
25	Teacher Education	8	7	31-37
26	Collective Bargaining	7	9	22-26
27	Interstate Compacts (Regionals)	7	7	31-37
28	Optometry	7	8	27-30
29	Vocational and Occupational Education	7	12	17
30	Educational Opportunity	6	9	22-26
31	Transfer Students	6	8	27-30
32	Affirmative Action	5	3	45-56
33	Basic Skills and Competency	5	6	38-39
34	Consortia	5	11	18-19
35	Energy	5	7	31-37
36	Enrollment Projections	5	—	—
37	Educational Television	5	7	31-37
38	Faculty Development	5	4	42-44
39	Federal Programs (General)	5	2	57-71
40	Handicapped	5	1	71-121
41	Institutional Changes (Status, Titles, Etc.)	5	7	31-37

Order	Issue	Frequency of Occurrence (Number of States) 1978	1977	Order 1977
42	Data Processing	4	3	45-56
43	Desegregation	4	4	42-44
44	Health Manpower Planning	4	7	31-37
45	New Campuses	4	2	57-71
46	Allied Health	3	2	57-71
47	Career Opportunities Program	3	1	72-121
48	Cost Studies	3	7	31-37
49	Dental Education	3	6	38-39
50	External Degrees	3	—	—
51	Osteopathic Medicine	3	2	57-71
52	Performance Audit	3	2	57-71
53	Planning for Decline	3	—	—
54	Regionalism	3	1	72-121
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Selected Resources For Information on the States

One of the most useful resources for information on developments in higher education in the states is *Higher Education in the States*, published by the Education Commission of the States. The subscription price for 1979 will be $6.50. Subscription orders may be sent to Postsecondary Education Department, Education Commission of the States, Suite 300, 1860 Lincoln Street, Denver, Colorado 80295.

The following selected abstracts on *Reciprocity* and *Articulation/Credit Transfer* are reprinted from the 1978 review of state actions.

Reciprocity

From *Higher Education in the States*, Volume 7, Number 2, 1978, published by the Education Commission of the States

Colorado

The governor designated the state 1202 commission as the agency responsible for planning for educational information centers in Colorado. The commission will work closely with the Colorado Department of Education in this effort. The 1977 legislature enacted legislation that authorized the Commission on Higher Education to negotiate agreements with other states whereby up to one-year exchanges of individual students could be arranged. States were surveyed as to their interest, and during 1978 Colorado students did participate in the program. The statute provides for a yearly maximum of 50 students to be involved in the program.

Iowa

Reciprocity became a major topic in Iowa during 1977 when discussions were initiated in several areas. The need to train an unusually large number of optometrists over the next 10 years has led to discussions about a regional optometry school in the Midwestern states. Missouri passed a bill providing for such an institution, if the regional concept can be adopted within the Midwest. The Iowa Coordinating Council for Post-High School Education is currently undertaking a study of reciprocity including proposals related to interstate compacts, tuition reciprocity, and student exchange programs. The study was initiated in order to advise the legislature that is considering model legislation for a Midwestern Education Compact based on a proposal by the Midwest Council of State Governments.

Maryland

The Board for Higher Education sponsored legislation that will allow reciprocal in-state tuition rate adjustments between Maryland and West Virginia. The program has the dual purpose of increasing enrollment at a community college with nearby West Virginia students, while improving access for students in Washington County, Maryland, to four-year public higher education institutions in West Virginia. Legislation also was enacted protecting state officers and employees from judgements rendered in civil suits growing out of actions in the performance of their official duties.

Minnesota

Regarding Fairmont, the board recommended that the State University Board be requested to consider how, on a pilot basis, institutional services might be provided in Fairmont to improve program coordination and to provide educational and career counseling. The board also recommended that its staff, in consultation with the community college system, explore the possibility of establishing a reciprocity agreement with community colleges in Iowa. Later in the year the State Board for Community Colleges and the State University Board began implementing the Coordinating Board's recommendations, and discussions between Minnesota and Iowa officials began.

Reciprocal tuition agreements between Minnesota and Wisconsin, North Dakota and South Dakota will

become effective in Fall 1978. The board adopted a new reciprocity agreement with South Dakota and renewed the existing agreements with Wisconsin and North Dakota. Although the Coordinating Board approved the proposed agreement in November 1977, the South Dakota legislature added a 5 percent cap on Minnesota enrollees in the schools of law and medicine. Public higher educational institutions are covered under the agreement. Public technical institutes are not covered, but arrangements with vocational-technical authorities in South Dakota are anticipated soon.

Ohio

The 1977 legislature authorized the Board of Regents to negotiate interstate agreements for reciprocal tuition and student aid programs with contiguous states. One reciprocity agreement established with Pennsylvania in Spring 1978 will make it possible for Ohio instructional grant recipients to utilize their awards at approved Pennsylvania institutions. A contract just completed with Michigan will permit reciprocal waiving of out-of-state tuition at the University of Toledo and Eastern Michigan University. Similar discussions have been initiated with other states surrounding Ohio.

Articulation/Credit Transfer

From *Higher Education in the States*, Volume 7, Number 2, 1978, published by the Education Commission of the States.

Connecticut

To assist student mobility, the board again published a guidebook, *College Transfer in Connecticut*, containing profiles of the transfer policies and procedures of all of the colleges and universities in the state. A cross-registration bulletin is being published to facilitate the sharing of resources among Connecticut institutions of higher education. In order to increase communications within the higher education community, with other state agencies and with legislators, the Board of Higher Education has initiated a new quarterly newsletter, *P.S. Postsecondary Education in Connecticut*.

Kentucky

A student transferability study, begun in 1976-77 and completed late in 1977, resulted in recommendations for improving student transfer policies and procedures and for making transfer easier among Kentucky's colleges and universities. Among the recommendations were that course equivalency guides be developed, that campus mechanisms for dealing with articulation problems and transfer policies be improved, and that a transferability guidebook be published.

Pennsylvania

While the general austerity in public funding has precluded the establishment of any new two-year postsecondary institution, there is growing evidence of increased interinstitutional cooperation. There has been a sharp growth in the number of successful articulation programs between the area vocational-technical schools and the community colleges and between the receiving baccalaureate colleges and the two-year postsecondary institutions. The Department of Education has strengthened its liaison role with the community colleges, junior colleges, and the degree-granting proprietary schools. As a result, the revision of the state board regulations governing the community colleges was done jointly by staff and college administrators and trustees. The junior colleges were given staff support to assist in their obtaining regional accreditation, and the department's academic program review of degree-granting proprietary schools was made less difficult.

Southern states are well served by the activities and publications of the Southern Regional Educational Board (SREB) in Atlanta, Georgia. Some of these publications will be of interest to educational planners and policy makers in other regions. Two recent ones are:

Quindry, Kenneth E., and Niles Schoening, *State and Local Tax Ability and Effort 1977*. Atlanta, Southern Regional Education Board, 1979. Copies may be obtained from SREB for $3.00.

Southern Higher Education Legislative Report, 1978. Atlanta, Southern Regional Educational Board, October 1978. Copies may be obtained from SREB for $1.00.

Information about SREB activities and publications may be obtained from the Southern Regional Education Board, 130 Sixth Street N.W., Atlanta, Georgia 30313.

Planners interested in an overview of tax wealth in the states may also turn to:

Halstead, D. Kent, *Tax Wealth in the Fifty States*. Washington, D.C., The National Institute of Education, 1978.

Copies of this document are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

State Labor Legislation Enacted in 1978

Although it was a light legislative year, 17 States revised minimum wage rates; other action included anti-discrimination laws, easing of mandatory retirement rules, and new programs to help displaced homemakers

Richard R. Nelson

The volume of labor legislation enacted by State legislatures was less in 1978 than in recent years;[1] however, significant activity took place both in traditional standards fields, including minimum wage rates, child labor, and job discrimination, and in more recently emerging fields, including mandatory retirement, sunset laws, and help for displaced homemakers.

Much legislative activity concerned minimum wage rates, as increases provided for in the 1977 amendments to the Fair Labor Standards Act (FLSA) spurred State action. New legislation was enacted in 1978 or late 1977 in 17 jurisdictions. Also, minimum wage rates in several States were increased by prior law, wage order, or administrative action.

Twelve jurisdictions now have a minimum rate equal to the $2.65-an-hour Federal standard, and 11 of these will match the Federal increase to $2.90 on January 1, 1979, or later in the year. Alaska, Connecticut, and certain industries in the District of Columbia now have minimums higher than the Federal rate. In addition, in almost half the jurisdictions, the minimum wage for tipped employees was set higher than that payable under the FLSA.

Several States altered provisions of their wage laws. Michigan extended coverage of its law from employers of four or more to employers of two or more and removed the exemption for persons 65 years of age and over. The Oklahoma Tripartite Wage and Hour Commission, formerly responsible for administering the minimum wage law, was abolished, and its powers were vested exclusively in the labor commissioner. In Kentucky, the wage payment sections of several laws were amended to enlarge the definition of wages for purposes of the minimum wage, prevailing wage, equal pay, and wage payment laws to include vested vacation pay, overtime, severance pay, bonuses, and other payments.

Wage garnishment or assignment continued to attract legislative attention, with laws enacted in 12 States. Most of these dealt with the amount

Reprinted with permission from *Monthly Labor Review*, January 1979, pp 26-42.

of a person's earnings that may be garnished. Laws in six States specifically mentioned child support payments. Maryland required employers to honor multiple garnishments against the same employee in the order they are received.

Child labor legislation continued recent patterns of amendments to ease employment restrictions. Restrictions concerning nightwork and maximum hours were eliminated for 16- and 17-year-old minors in Ohio and Tennessee. Certificate requirements were eased in New York, Pennsylvania, and Virginia and were replaced in Tennessee by an employer obligation to require proof of age. Employment of minors in theatrical or other performances was the subject of legislation in Georgia, Louisiana, New Jersey, New York, and Oklahoma. Michigan's new child labor law retained most of the previous law's standards, but it eliminated a requirement that employers have occupational approval numbers, changed the farm work exemption from a total exemption to an exemption only for employment not in violation of department standards, and expanded the high school graduate exemption. Pennsylvania removed provisions that were more restrictive for female than for male workers.

Laws concerning arbitrary compulsory retirement based upon age were enacted in 10 States, some perhaps as a result of the 1978 amendments to the Federal Age Discrimination in Employment Act. Among other States, Arizona and Delaware raised the mandatory retirement age from 65 to 70 for State employees, and, effective June 1, 1980, Minnesota raised the retirement age similarly for most private and public sector employees. In Louisiana, administrative officers were asked to waive the 65-year mandatory retirement age of State and local employees prior to the effective date of the Federal law (Jan. 1, 1979), and an executive order, effective in November 1977, abolished mandatory retirement of State employees in Kansas.

Various forms of employment discrimination were addressed by legislation in 29 jurisdictions. Most notable were new comprehensive human rights laws for public employees in Georgia and for both pubic and private sector workers in Tennessee. Sex discrimination was addressed by legislation in 12 jurisdictions, including Alaska, which created a commission on the status of women, and the District of Columbia, which gave statutory status to a commission which previously existed by executive order. Legislation to aid handicapped workers was enacted in 12 States. The primary purpose of these laws was to prohibit employment discrimination on the basis of a handicap that is unrelated to ability to perform the job. In Ohio, any qualified person between 40 and 65 who is refused a job interview or discharged without cause may bring a civil action against the employer on the basis of age discrimination. Discrimination in the employment or occupational licensing of persons with arrest or conviction records was prohibited in Kentucky and Minnesota. As a result of legislative action in Iowa, employers who discriminate on any basis may lose public contracts.

Help for displaced homemakers has attracted considerable attention over the last few years, with the passage of several laws. During 1978, eight additional States—Delaware, Iowa, Kentucky, Massachusetts, New Mexico, Oklahoma, Rhode Island, and Wisconsin—passed legislation to help homemakers displaced because of dissolution of marriage or other loss of family income. Because of their age or lack of paid work experience, displaced homemakers often face difficulty in getting jobs and are frequently ineligible for financial assistance from public sources. Almost all of the new laws provide for the establishment of multipurpose centers to provide employment services and other aids.

A comprehensive law in Pennsylvania grants seasonal farmworkers important new protection. These workers now must be paid the State minimum wage, may not work in excess of specified hours, and are afforded numerous other or stronger protections governing child labor, equal pay, wage payment, the registration of farm labor contractors, and the certification of labor camps. In other legislation affecting agricultural workers, California required that unloaders of farm products in produce markets in three counties be registered by the State labor commissioner, who may investigate complaints and mediate disputes on the scale of charges. Virginia created a farmworkers commission.

Various other areas of labor standards were subjects of legislation in 1978. Kansas modified its illegal alien law to exempt from the ban on employment those aliens who are permitted to remain in the United States by federal law, and Louisiana appointed a committee to study the relationship between unemployment and the employment of illegal aliens. Independent labor departments were established through the consolidation of previously separate boards in the District of Columbia and by the transfer of various divisions from other departments in Florida. "Sunset laws" requiring periodic reexamination of State agencies, rules, and regulations were enacted or amended in Florida, Georgia, and Kansas.

In Maryland, the labor commissioner was authorized to enter into reciprocal agreements with other States to collect unpaid wages due from out-of-State employers and employers who leave the State without making payment. An intergovernmental relations council was established in Rhode Island to study the relationship between and among the local, State, and Federal governments and to consider methods of fostering better relations; and, in South Carolina, a law was enacted permitting the exchange of employees between and among Federal, State, and local governments.

Labor relations issues were the subject of statutes, court action, and feferenda. Collective bargaining was authorized by law for teachers in Tennessee and for employees of the California State Universities and Colleges and by a constitutional amendment for Michigan State Police. In Utah, the State Supreme Court held that the Labor Disputes Act, which recognizes labor's right to collective bargaining, does not apply to municipal employees. A "right-to-work" constitutional amendment was rejected by Missouri voters in the November general election.

No additional States ratified the proposed Equal Rights Amendment to the U.S. Constitution, but Congress extended the deadline for securing approval by the three additional States necessary for ratification to June 30, 1982. States will not be permitted to rescind prior ratification.

The following is a summary by jurisdiction of labor legislation during 1978:

Alaska

Wages. By prior law, which sets the minimum wage at 50 cents above the Federal rate, the State rate rose to $3.15 an hour in 1978 and will increase each year, reaching $3.85 on January 1, 1981.

Equal employment opportunity. The Commission on the Status of Women was created with authority to examine such issues as education, homemaking, civil and legal rights, and labor and employment. The commission, which will be terminated on June 30, 1983, is to make annual reports to the governor on its proceedings and recommendations.

The State personnel act was amended so that persons certified as severly handicapped may be granted employment preference without taking a competitive examination.

A resolution was adopted that urges the U.S. Department of Labor to conduct, with the State department of labor, an investigation of the labor certification of nonimmigrant aliens working in Alaska's fish processing industry and to consult the State about the availability of Alaskan workers for certain jobs before issuing work permits to nonimmigrant aliens.

Other laws. The name of the Governor's Committee on Employment of the Physically Handicapped was changed to the Governor's Committee on Employment of the Handicapped, and publicly financed vocational rehabilitation services now are to be provided to all handicapped individuals, not just to those who require public assistance.

The U.S. Supreme Court held unconstitutional the "Alaska Hire' Act, which required hiring preference for State residents in all oil and gas leases, easements, right-of-way permits, and unitization agreements on the basis that it violated the privileges and immunities clause. This clause bars discrimination against citizens of other States.

Arizona

Wages. Prisoners under the prison industries program may now receive wages up to 50 cents per hour, instead of 35 cents; if the director of the Department of Corrections contracts with private parties to provide services or labor, prisoners may receive higher wages, not to exceed the minimum wage prescribed by law.

Equal employment opportunity. The mandatory retirement age was raised from 65 to 70 for State employees; provisions were made for continued employment after age 70 by annual requests if performance and other standards are met.

Discrimination based on race, color, religion, national origin, or sex was prohibited in all phases of apprenticeship employment and training.

Occupational safety and health. A new provision provides for inspection of boilers and heaters by the Industrial Commission and establishes safety conditions for elevators and similar conveyances.

Other laws. The number of hours required on-the-job work experience in apprenticeship programs was reduced from 4,000 to 2,000, and criteria were established for determining apprenticeable occupations.

Wages. A wage order increased the minimum wage rate from $2.50 an hour to $2.65 effective April 1, 1978, with a further increase to $2.90 scheduled on January 1, 1979.

An employee may designate in writing a representative to act for him in filing specified wage and other monetary claims with the labor commissioner for collection.

Retaliation against employees for filing bona fide complaints or claims under any of the provisions of the labor code within the jurisdiction of the labor commissioner was prohibited as was retaliation against an employee who has filed or intends to file a claim against an employer alleging an occupational injury.

An exemption from garnishment or attachment in bankruptcy proceedings for monies held in private retirement or profitsharing plans was expanded to provide a total exemption from any garnishment or attachment of such funds.

An employee's earnings protection law was enacted to govern the procedures for wage garnishment. The Judicial Council was authorized to do all that is required by the U.S. Department of Labor to exempt the State from the earnings garnishment provisions of the Federal Consumer Credit Protection Act.

Child labor. The law permitting minors between 16 and 18 years old enrolled in approved work experience education programs to work as late as 12:30 a.m. was extended to minors in similar programs conducted by private schools.

Agriculture. All employees of the Agricultural Labor Relations Board now are specifically required to perform their duties in an objective and impartial manner without prejudice toward any party subject to the board's jurisdiction.

Separate provisions on regulating unloaders of farm products in produce markets were enacted for Alameda, San Francisco, and San Mateo counties. The labor commissioner will register unloaders, investigate complaints, and mediate disputes involving the establishment of a scale of charges.

Equal employment opportunity. To conform to the Federal Age Discrimination in Employment Act amendments of 1978, changes were made

in State and local retirement systems to extend prohibitions against mandatory retirement prior to the age of 70 for public employees.

Inquiries into the physical condition or medical history of job applicants is permissible if directly related to the position.

The review authority of the Division of Fair Employment Practices, previously limited to public works contracts, was changed to a general authority to review and investigate employment policies and practices of all State contractors and subcontractors and to recommend appropriate sanctions.

State licensing boards, agencies, and authorities in the Department of Consumer Affairs were included within the coverage of the Fair Employment Practice Act, which states that it is unlawful to require an examination or qualification that is not job related and that discriminates because of an applicant's race, creed, color, national origin or ancestry, sex, age, medical condition, or physical handicap.

The ban on employment discrimination against pregnant women by district school boards was expanded to apply to all employers. Among other prohibitions, an employer may not refuse to promote or to select a pregnant employee for training if the training program can be completed at least 3 months before beginning maternity leave, nor can an employee be discharged for pregnancy. A pregnant employee must receive the same benefits as other employees, except that an employer is not required to grant disability leave for more than 6 weeks.

Labor relations. An employer-employee relations act, applicable to employees of the State college and university systems, was enacted, to be administered by the public employment relations board. Provision was made for mediation and factfinding in cases of impasses, and authority was given for agreements providing for binding arbitration.

Up to three representatives from each employee organization representing State college and university system employees are to be given reasonable time off during working hours to attend and make presentations at trustees meetings if a matter affecting conditions of employment is scheduled for consideration.

The name of the State Conciliation Service was changed to the State Mediation and Conciliation Service. The service is within the Department of Industrial Relations.

An employee organization alleging, in a petition to the public employment relations board, that the employees in an appropriate unit no longer wish to be represented by another employee organization may no longer use current dues deduction authorizations as evidence of support.

Private employment agencies. The requirement that agency counselors register with the Bureau of Employment Agencies was repealed, but agencies now must provide approved training for all new counselors. The exemption for management consultants now applies if they do not recommend individuals to positions having a starting salary of less than $25,000 per year, rather than the previous $20,000.

Regulation of musician booking

agencies was transferred from the Department of Consumer Affairs to the labor department, where they, along with artists' managers, will be included within the provisions governing talent agencies.

Occupational safety and health. An employer cited for a first-instance occupational safety and health violation, resulting from an onsite inspection, will not be assessed a civil penalty unless the inspection finds 10 violations or more. This policy has been implemented by administrative regulations in effect since January 1, 1977.

The Department of Industrial Relations will be responsible for developing a long-range program for upgrading and expanding the State's resources in occupational health and medicine, including the creation of health centers that will train occupational health specialists, serve as referral centers for occupational illnesses, and engage in research on the causes, diagnosis, and prevention of occupational illnesses. The department is also to develop and maintain a repository of research information and data relating to toxic materials and harmful physical agents in use in places of employment.

A limited jurisdiction of the Division of Industrial Safety over workers employed in the construction and repair of railroad equipment was expanded to include jurisdiction over occupational safety and health problems of railroad employees.

Resolutions urged the Congress to amend the Occupational Safety and Health Act to allow the State program the administrative flexibility it needs to operate more effectively and to amend the Federal Mine Safety and Health Act to avoid duplication of efforts and conflicting laws, regulations, and penalties and to permit the State's Division of Industrial Safety to be the sole safety enforcement agency in the State.

Other laws. Discrimination against or discharge of an employee who is required to serve as a witness in court is prohibited provided reasonable notice is given to the employer. Discrimination of any type, rather than the previous discharge only, against an employee who serves as an inquest or trial juror is now unlawful.

The use of private investigators to provide employers with information concerning their employees was regulated. Among other provisions, employees now must receive copies of investigation reports prior to discipline or discharge, and the payment of bonuses to private investigators for discovering unfavorable information is prohibited.

A resolution urges the State and local governments, charitable and service organizations, and private employers to take volunteer work experience into account in job announcements, in application forms, and in the consideration of applicants for employment.

Connecticut

Wages. The hourly minimum wage increased to $2.66 on July 1, with further increases on January 1 of each year, to $2.91 in 1979, $3.12 in 1980, and $3.37 in 1981. The former wage differential was eliminated for farmworkers, who now are entitled to the same rate as others.

Employers' civil liability for unpaid wages was doubled to twice the amount of wages due along with costs and reasonable attorney fees, and the maximum fine for violation was increased from $200 to $1,000.

If an employer policy or collective bargaining agreement provides for payment of accrued fringe benefits to a discharged employee, the employer must pay for them in the form of wages.

The amount of wages exempt from garnishment for support payments was increased from $50 a week to the first $70 of disposable weekly earnings.

Equal employment opportunity. Provisions affecting involuntary retirement under the antidiscrimination law were conformed to the 1978 amendments to the Federal Age Discrimination Act; however, termination of employment is now specifically permissible where age is a bona fide occupational qualification, such as in police work or firefighting.

It is now unlawful for an employer, employment agency, or labor organization to discriminate against mentally retarded persons, unless the disability prevents performance of the particular work involved.

Labor relations. The municipal collective bargaining law was amended to prohibit the inclusion of both supervisory and other employes in any new collective bargaining units.

Other laws. The number of hours of required training in approved apprenticeship programs was reduced from 4,000 to 2,000.

The Department of Corrections may contract with private nonprofit agencies to help prior offenders obtain employment, housing, transportation, and counseling.

Delaware

Wages. The State tax commissioner is now specifically authorized to issue a warrant to garnish wages of delinquent taxpayers after obtaining a judgement.

Child labor. The Alcoholic Beverage Control Act, which has a 20-year age minimum for liquor possession, was amended to permit liquor importers to employ persons 18 and 19 years old in occupations other than sales, and catering businesses and bowling alleys to employ 16-year-olds and over, provided the minors do not sell or serve liquor. Prior exemptions permit the employment of 16-year-olds in hotels, clubs, restaurants, and racetracks which have liquor licenses.

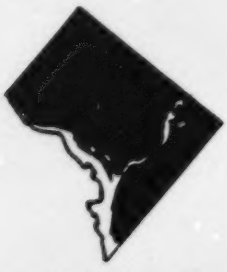
Equal employment opportunity. The mandatory retirement age for State employees was raised from 65 to 70 years.

A public employee will be guilty of a misdemeanor, if, in performing his official functions, he knowingly practices discrimination on the basis of race, creed, color, sex, or national origin.

Resolutions were adopted urging the congressional delegation to work for an extension of the deadline for ratification of the proposed Federal Equal Rights Amendment and to support legislation to establish a national office of the handicapped.

Displaced homemakers. A displaced homemakers act directs the State secretary of labor to establish and coordinate multipurpose service programs for displaced homemakers to provide job counseling, training, and placement as well as information on subjects such as financial management and health services.

District of Columbia



Wages. A revised wage order, effective April 15, 1978, increases the minimum wage for laundry and drycleaning industry employees from $2.40 to $3 an hour.

Equal employment opportunity. A new enactment gives statutory status to the Commission on Women, which previously existed by executive order of the mayor, and new procedures were adopted for the selection of future members and the appointment of a chairperson.

Other laws. The previously separate Minimum Wage and Industrial Safety Board, Unemployment Compensation Board, and Department of Manpower were abolished and their functions consolidated into a newly created Department of Labor.

Florida

Wages. The courts were authorized to award costs and reasonable attorney's fees in a civil action for unpaid wages. A continuing writ of garnishment, formerly issuable for child support payments, may now be issued also for periodic alimony payments.

Equal employment opportunity. The Human Rights Act was amended to conform provisions concerning involuntary retirement under seniority systems or employee benefit plans to the 1978 amendments to the Federal Age Discrimination in Employment Act.

Veterans' preference provisions in public employment were clarified to include certain spouses and unmarried widows and widowers under the privilege of preference in promotion or appointment to noncompetitive positions, formerly available only to veterans themselves.

Private employment agencies. The maximum period of employment during which empoyees are entitled to a refund of 75 percent of the fee they paid the agency, if they are discharged through no fault of their own, was increased from 14 to 30 days.

Other laws. The Divisions of Labor and of Employment Security were removed from the Department of Commerce and combined into a new Department of Labor and Employment Security. This department also includes commissions on public employee relations, industrial relations, and unemployment appeals.

A sunset law was enacted to abolish certain statutory boards, committees, commissions, and councils that have not met since January 1, 1975, including the Employment Service Council, and setting an October 1, 1981, termination date for several others, unless reviewed and reestablished by the legislature. Some of those slated for review are the Private Employment Agencies Advisory Committee, State Apprenticeship Council, Industry Advisory Council, and Small Business Advisory Council.

Georgia

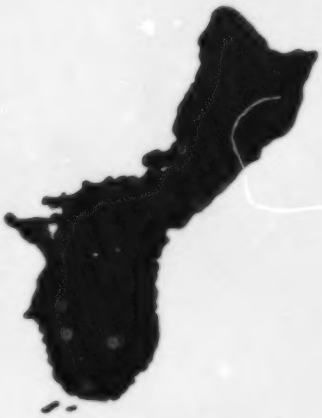
Child labor. Minors now may work in motion picture, theatrical, radio, or television productions or as photographic or advertising models with written consent of the labor commissioner. Employment of any minor for pornographic purposes is a felony.

Equal employment opportunity. A comprehensive fair employment practices law was enacted which prohibits employment discrimination against public employees on the basis of race, color, religion, national origin, sex, handicap, or age (between 40 and 65) and establishes an office of fair employment practices and a fair employment practices advisory board.

A resolution sustains the study committee on services for the aged and directs it to study recommendations of the 1977 committee, including employment and mandatory retirement, and to report its findings and legislative proposals to the general assembly by January 1, 1979.

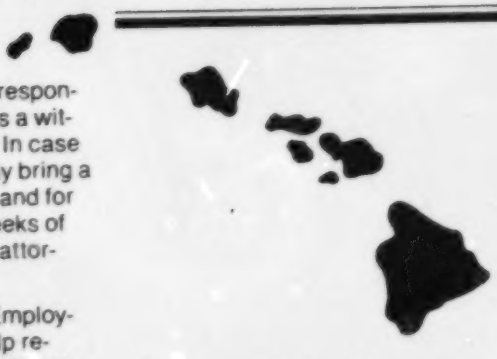
Private employment agencies. The scheduled termination date of the employment agency regulatory law and advisory council under the sunset law was extended from July 1, 1978, to July 1, 1984.

Guam



Wages. The minimum wage rose to $2.65 an hour and will continue to increase each year to match Federal rates under a prior law which adopted the FLSA rates by reference.

Hawaii



Wages. The minimum wage rate was raised from $2.40 to $2.65 an hour effective July 1, 1978, with future increases to $2.90 on July 1, 1979, $3.10 on July 1, 1980, and $3.35 on July 1, 1981. These increases are identical to those under the Federal law.

The amount of wages subject to garnishment is computed on wages remaining after the withholding of deductions required by law.

Equal employment opportunity. It is now unlawful to discharge or suspend an employee for receiving or responding to a summons to serve as a witness or prospective witness. In case of violation, the employee may bring a civil action for reinstatement and for reimbursement for up to 6 weeks of lost wages and a reasonable attorney's fee.

Labor relations. The Public Employment Relations Board will help resolve bargaining impasses between firefighters and public empoyers by implementing special mediation and arbitration procedures.

The mandatory adjustment of compensation, hours, terms and conditions of employment, and other benefits applicable to public employees who are excluded from collective bargaining was extended to most court officers and employees.

Private employment agencies. All applicants for employment agency licenses are required to pass a certified employment consultant examination as designated by the director of the labor department.

Occupational safety and health. Several resolutions related to safety and health were adopted. The State's congressional delegation was requested to support efforts to gain Federal certification of its State occupational safety and health plan; labor unions and employers were urged to cooperate in the development and implementation of occupational safety and health programs with help from the legislature; and the State labor department was requested to cooperate with workers' compensation insurers to start employer safety consultation services.

Other laws. Hours of training required under apprenticeship agreements were changed from 4,000 hours to 2,000 hours or 12 months of reasonably continuous employment.

A 1-year residency requirement for public employment was replaced with a hiring preference for applicants who have filed resident income tax returns or who have been claimed as dependents on such returns.

A resolution urged the State's congressional delegation to work for passage of the Humphrey-Hawkins Full Employment and Balanced Growth Act.

Idaho

Wages. An exemption from the minimum wage law was added for seasonal employees of a nonprofit camping program.

Equal employment opportunity. A resolution was adopted delaying from February 2, 1978, to February 2, 1979, the effective date of amendments to the rules of the Human Rights Commission pertaining to the filing of discriminatory complaints, postfiling procedures, and orders issued by the commission.

Illinois

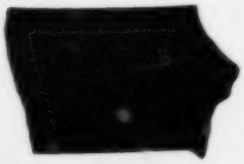
Agriculture. The effective date of the surety bond requirement for farm labor contractors was delayed until July 1, 1979. During this time, the director of the Department of Labor is to study the availability of surety bonds and other sources of financial assurance for such contractors and recommend continuance or discontinuance of the requirement.

Equal employment opportunity. The Department of Equal Employment Opportunity and the Equal Employment Opportunity Advisory Council were created to implement equal employment opportunity and affirmative action programs in State agencies.

Within 120 days after the filing of an unfair employment practices charge, the Fair Employment Practices Commission is to convene a factfinding conference to obtain evidence, identify issues in dispute, and explore the feasibility of negotiating a settlement prior to taking further action.

It was resolved that a special House Committee on equal employment opportunity be created to study and investigate discrimination in State employment against women, minorities, the hanicapped, elderly, and persons with disabilities, to review the operations of the Department of Personnel and the EEO officer, and to determine the need for revisions in State law or additional financial aid and manpower to imprive the State EEO program.

Private employment agencies. Administration of the private employment agencies act was strengthened by authorizing the labor director to issue orders to cease violating the law and to obtain court orders commanding agencies to comply, under penalty of contempt of court. Agency negligence, not only misconduct, will now be a basis for action against the surety bond.



Iowa

Wages. Court-ordered wage assignments for child support were made binding upon employers. "Disposable earnings" for purposes of garnishment limitation was redefined to mean earnings remaining after deductions required by law to be withheld or asigned instead of only withheld.

Equal employment opportunity. Several changes were made in the civil rights law including authorizing complainants to file court action if their complaints are not resolved by the Civil Rights Commission within 120 days and permitting the commission to designate local agencies as referral agencies for the disposition of complaints.

Other changes specifically exempt from the age discrimination provisions bona fide apprenticeship programs empoyees involved more than 45 years old, persons under 18 not legally considered adults, and State or Federal programs designed to benefit a specific age group. Also, employers may now lose public contracts if they discriminate on any basis.

A resolution proposes that an equal rights amendment to the State constitution be considered by the next general assembly.

Labor relations. The exemption from the open meetings law of public employer and employee negotiating sessions, strategy meetings, mediation,

and arbitration deliberations was amended to require public meetings when parties present their initial bargaining positions.

Occupational safety and health. The position of State boiler inspector was eliminated, and the labor commissioner was made responsible for inspections and enforcement of safety provisions for all boilers and unfired steam pressure vessels.

Displaced homemakers. Money was designated from the appropriation for adult and children services to fund displaced homemaker projects.

Kansas

Wages. Wage deductions were authorized for State employee organization membership dues at the employee's written request.

Limits were placed on the percentage of earnings which may be garnished to satisfy support payment orders.

Equal employment opportunity. Administrative regulations of the Commission on Civil Rights, pertaining to discrimination on public works contracts, were amended to reduce compliance requirements. For example, the commission may no longer require affirmative action programs but now must negotiate for their preparation and implementation, and contractors must no longer solicit bids from minority and female contractors but instead are prohibited from discriminatorily excluding such contractors from bidding.

An executive order effective November 23, 1977, abolished mandatory retirement at age 65 of State agency employees if they remain able to perform acceptable work.

Several changes were made in the civil service act, including the addition of a requirement that all personnel actions be made without regard to race, national origin or ancestry, religion, political affiliation, or other factors not relating to merit and shall not be based on sex, age, or physical disability except where sex, age, and physical requirements constitute a bona fide occupational qualification. Retaliation against an employee for using the appeals procedure is prohibited.

Occupational safety and health. Amendments to the law included extending coverage to State agencies and public works, broadening the scope of investigations to include additional factors such as job-related illness and occupant capacity, and prohibiting retaliation against employees for filing complaints or furnishing information.

Undocumented workers. The existing ban on empoyment of illegal alians will not apply to the employment of aliens who have illegally entered the United States but who are permitted by Federal law to remain.

Other laws. A sunset law abolishes several regulatory agencies and boards on various dates. For example, the Commission on Civil Rights is scheduled for termination on July 1, 1981. The law also provides for public hearings to determine the need for continued existence with legislative action required to continue or reestablish these agencies.

Kentucky

Wages. The minimum wage rate was raised from $1.60 to $2 an hour, with a future increase to $2.15 on July 1, 1979.

Changes were made affecting the wage payment sections of several laws. The definition of wages for purposes of the minimum wage, prevailing wage, equal pay, and wage payment laws was enlarged to specifically include vested vacation pay, overtime, severance pay, bonuses, and other payments. The wage payment law was extended to include all empoyers instead of only corporations, and most State employees were exempted from the minimum wage law. Under the wage payment law, the labor commissioner was authorized to take assignment for collection rather than for minimum wage and overtime only and to enforce the prevailing wage law, including collecting of wages due and taking action against employers in violation. Employers may be barred from future public works contracts until they comply with the law's provisions.

It is now unlawful for any employer to withhold from an employee any part of an agreed upon wage (formerly the prohibition applied only to collectively bargained wage agreements). The exception for withholdings authorized by State or Federal law was extended to include local laws.

The difinition of public authority in the prevailing wage law was amended to include any nonprofit corporation funded to act as a government agency in connection with the construction of public buildings.

Hours of work. Employers using continuous work scheduling are now exempt from the Sunday closing law, provided each employee receives 1 day of rest in each calendar week.

Equal employment opportunity. With the exception of those who practice

law and of nonelective peace officers, it is now unlawful to deny public employment or an occupational license because of a prior conviction of a crime, except for crimes involving moral turpitude or relating directly to the employment or license sought.

Labor relations. Use of an injunction without a preliminary hearing is prohibited during a strike, picketing, or assembly, except when violence has occured.

An 18-member labor-management advisory council composed of 8 management and 8 labor members was created. The commissioners of labor and commerce will be ex officio nonvoting members, with the commissioner of labor serving as chairman.

Occupational safety and health. Most safety legislation relates to mining. Mine inspectors were authorized to enter and inspect any coal or clay mine at any reasonable time. It was made a felony to operate a validly closed mine. Procedures were expanded for corrective action when miners are deemed to be in imminent danger of bodily harm. Also, educational, training, and certification requirements for miners were strengthened.

Displaced homemakers. A new law permits the secretary of the Department for Human Resources to establish multipurpose service centers to provide job training and counseling, placement, health education, and financial and educational services to displaced homemakers. Whenever possible, staff positions will be filled by displaced homemakers.

Louisiana

Wages. The minimum amount of disposable income exempt from garnishment was increased from $70 per week to 30 times the Federal minimum hourly wage.

Child labor. An exemption from the law of any minor 14 or over in a concert or theatrical performance, with a permit granted by the commissioner of labor, was repealed. A new exemption was enacted permitting the participation by any minor, with written parental consent, in any theatrical or musical performance sponsored by a nonprofit private organization or public body, or in a commercial motion picture being produced or filmed in the State, with the written consent of the director of the film commission.

Equal employment opportunity. Age discrimination in employment against persons at least 40 but less than 70 years of age by employers of 20 employees or more, employment agencies, and labor organizations is now prohibited. The law previously prohibited such discrimination against persons under 50 by employers of at least 25 employees. Age discrimination in employment practices is prohibited by any State or local agency or political subdivision.

The Governor was authorized to establish an Office of Civil Rights to perform such duties as investigate and act on equal employment opportunity and discrimination complaints in State services.

A resolution requested administrative officers to waive mandatory retirement of State and local employees who reach age 65 before January 1, 1979, the effective date of the Federal law raising the mandatory retirement age to 70.

A bureau for handicapped persons was created within the Department of Health and Human Resources to administer and expand responsibilities formerly exercised by the Governor's Committee on Employment of the Physically Handicapped. Duties will include conducting programs to educate employers on the advantages of hiring the handicapped, Federal tax incentives, and Federal laws pertaining to employment, training, and advancement of handicapped persons.

Civil service entrance or promotion tests in cities with populations of more than 100,000 will be adapted for applicants with impaired sensory, manual, or speaking skills, unless such skills are a bona fide occupational qualification. Public notice will be given of the availability of such tests.

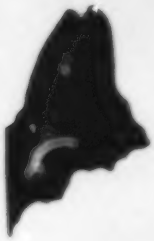
Undocumented workers. A joint legislative committee was created to study the relationship between unemployment in the State and the employment of illegal aliens. A report of findings and any proposed legislation are due prior to the 1979 regular session of the legislature

Other laws. A work opportunity program was established which includes training, job placement, and public service employment, with participation mandatory for most welfare and unemployment insurance recipients.

The number of hours of required training in approved apprenticeship programs was reduced from 4,000 to 2,000.

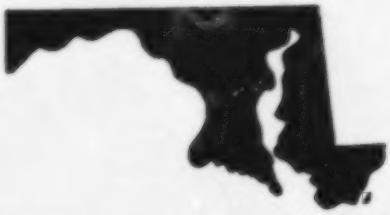
Maine

Wages. The minimum wage was increased to $2.65 on January 1, 1978, and will increase to $2.90 a year later, under a prior law which mandated matching State increases to the Federal rate, up to a maximum $3 rate.



Labor relations. Attorneys employed in the office of the attorney general were excluded from coverage under the State Employees Labor Relations Act. Classified employees were removed as 1 of the 3 occupational bargaining units permitted for vocational-technical institutes and State schools under the University of Main Labor Relations Act. The two other groups, faculty and instructors, and administrative staff remain covered.

Maryland



Wages. The minimum wage rose to $2.65 an hour and will continue to increase each year to match the Federal rate under a prior State law which adopted the FLSA rates by reference.

Farm machinery salesmen and employees of nonprofit organizations that furnish temporary home care services for the sick, aged, mentally ill, handicapped, or disabled are not exempt from overtime pay requirements.

The labor commissioner was authorized to enter into reciprocal agreements with other States to collect unpaid wages from out-of-State employers.

The time limit for bringing action under the equal pay law was extended from 1 to 3 years after the date of the alleged violation.

Employers must now honor garnishments against the same employee in the order they are received and must remit amounts withheld within 15 days of the close of the last pay period each month. Creditors are to furnish monthly statements of payments credited, and garnishment orders now lapse upon dismissal or resignation, unless the employee is reinstated within 90 days.

Child labor. The minimum consecutive hours of time off outside of school that minors of 16 and 17 must have in each 24-hour day were reduced from 9 to 8. The nightwork prohibition between 7 p.m. and 8 a.m. for those under 16 was retained.

Persons 18 or older now may be employed to stock alcoholic beverages in Anne Arundel County; however, persons under 21 continue to be prohibited from employment by the holder of a class D liquor license in the sale of alcoholic beverages.

Equal employment opportunity. The prohibition against the use of lie detector tests as a condition of employment was extended to State, county, and local government employment, except for employees of law enforcement agencies.

An employer cannot require an applicant to answer any question pertaining to a physical, psychological, or psychiatric illness, disability, handicap, or treatment that is not material to his fitness or capacity to perform the job. Previously, employers could not ask about any psychological or psychiatric condition or treatment.

Labor relations. State departments now are prohibited from awarding public contracts to persons found in contempt of court by a Federal Court of Appeals for failure to correct an unfair labor practice.

A formal five-step grievance procedure was established for classified employees of the University of Maryland.

Private employment agencies. Agencies knowingly charging or attempting to collect a higher fee than specified in the schedule previously filed with the administrator now forfeit their rights to any fee and must refund in full any previously collected fees. Agencies are no longer required to publish their address in all advertisements. The bond that they must deposit with the labor commissioner was increased from $5,000 to $7,000.

Occupational safety and health. Labor department investigators or inspectors who are authorized or required by law to inspect certain premises or property for occupational safety or health purposes may now apply to the District Court for administrative search warrants when, having made a proper request for entry, they are denied access.

The labor commissioner is authorized to issue regulations governing working conditions of employees working with high-voltage electrical lines.

Massachusetts

Wages. By an amendment adopted in late 1977, the minimum wage rate was increased to $2.65 an hour on January 1, 1978, and will increase to $2.90 on January 1, 1979, $3.10 on January 1, 1980, and $3.35 on January 1, 1981. An administrative regulation established subminimum rates for full-time students.

Equal employment opportunity. Age discrimination by dismissal or refusal to employ any person between 45 and 65 years of age is now subject to a fine of up to $500. A fine was not previously specified.

Labor relations. Advance notice must be posted alerting affected public employees to hearings being held by the labor relations commission to determine the exclusive representative for collective bargaining and for all elections.

Displaced homemakers. A new law directs the secretary of the Office of Economic Development and Manpower Affairs to establish multipurpose centers to provide displaced homemakers with counseling, training, education, and placement services to help them find employment. Whenever possible, the centers will be staffed by displaced homemakers.

Michigan

Wages. By an amendment adopted in late 1977, the minimum wage increased to $2.65 an hour on January 1, 1978, with future increases to $2.90 on January 1, 1979, $3.10 on January 1, 1980, and $3.35 on January 1, 1981. These increases equal those under the Federal law.

Coverage of the minimum wage law was extended from employers of four employees or more to employers of two or more at any time within a calendar year. The exemption for persons 65 years of age and over was removed.

Several changes were made in the wage payment law, including the following: authorizing the labor department rather than the county prosecutor to initiate action to enforce final agency orders; requiring written employee authorization for wage deductions; setting a time limit of 12 months after an alleged violation for filing a complaint; and establishing record-keeping requirements. Other changes prohibit the kickback of wages as a condition of employment, prohibit retaliation against an employee for filing a complaint, and increase the penalties for violation.

The prevailing wage law now also applies to school construction.

Child labor. A revised child labor law made several changes: elimination of a requirement that employers have occupational approval numbers; a change from a total farmwork exemption to an exemption only for employment not in violation of department standards; and exemption from the law for 16-year-olds who have completed the requirements for graduation from high school and for 17-year-olds who have passed a general educational development test. Previously only 17-year-olds with high school diplomas were exempt.

A youth employment clearinghouse was created within the Department of Labor to assemble data on unemployed persons 14 through 23 years of age and to monitor, evaluate, and make recommendations concerning youth employment programs.

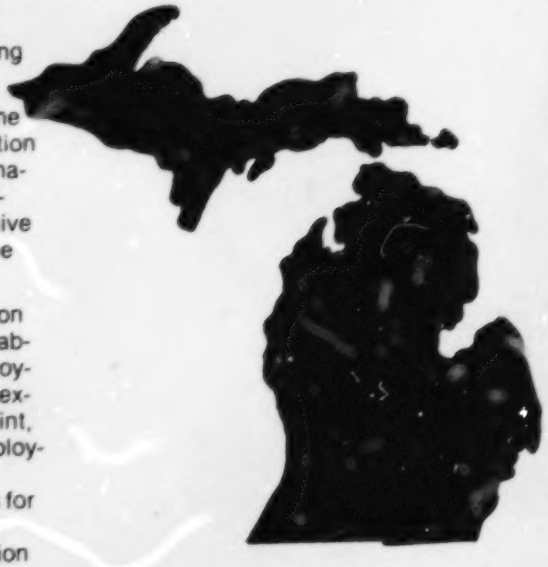
Equal employment opportunity. The prohibition against sex discrimination was expanded to include discrimination by reason of pregnancy, childbirth, or related conditions, exclusive of abortion not intended to save the life of the mother.

Labor relations. The right to petition the court for relief from an unfair labor practice, under the public employee collective bargaining law, was extended to any party with a complaint, rather than limited only to the Employment Relations Commission.

Special strike notice provisions for hospitals and public utilities were eliminated from the Labor Mediation Act. The same notice as for other employees is now required.

A constitutional amendment, passed in the 1978 general election, authorizes collective bargaining for the State police. As civil service employees, they did not previously have this right under the Public Employment Relations Act.

Private employment agencies. Applicants for employment agency licenses who are not of good moral character will be subject to rejection, suspension, revocation, or refusal to renew the license.



Occupational safety and health. The Fire Safety Board was authorized to issue rules for the storage, transportation, and handling of hazardous materials, and the State fire marshal is now required to inspect and certify each establishment and vehicle engaged in transporting hazardous materials.

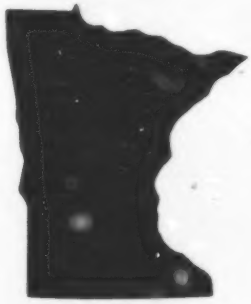
The Occupational Safety Standards Commission is no longer required to consult with an advisory committee that represents employee and employer interests in farm operations on the impact of any proposed safety regulations applicable to agriculture.

Any occupational safety and health board, commission, and committee is to conduct business at public meetings and is specifically required to give public notice of the time, date, and place of each meeting.

Other laws. A "right-to-know" law gives public and private employees the right to review their personnel files. It also establishes criteria both for the nature of material permitted to be kept on file or divulge to third parties and for procedures for correction or removal of false information.

The law governing occupational licensing of former offenders was amended to require the head of the licensing agency to screen criminal records prior to their use by the licensing board to insure that no prohibited information is included. The agency head is to set regulations for licensing boards to govern how they prescribe offenses that indicate an applicant is not likely to serve in the public interest.

Minnesota



Wages. Workers under 18 in corn detasseling work are now protected by overtime pay and all other provisions of minimum wage law, except for the minimum rate itself. Before, minors in all types of farmwork were exempt from the law.

For employees of residential buildings who receive housing as full or partial payment, the minimum wage entitlement is to be computed for time actually worked and to exclude on-call time on the premises.

Under an explicit wage deduction, employees may agree in advance to deductions, either at regular intervals or upon termination, for purchases from the employer.

Equal employment opportunity. Effective June 1, 1980, mandatory retirement before age 70 will be prohibited for most private and public sector employees. The compulsory retirement age for most State employees is currently 65.

The Commissioner of Personnel was directed to institute an affirmative action program in the State civil service to eliminate underutilization of qualified women, handicapped persons, blacks, Hispanics, Asian or Pacific Islanders, American Indians, or Alaskan natives. A Council on Affairs of Spanish-Speaking People was created to advise the Governor and legislature on problems such as education, employment, human rights, health, housing, and social welfare and to serve as a liaison with the Spanish-speaking community. Retaliatory employment discrimination by employers or unions against present or former members of the legislature for comments made or beliefs held while serving was prohibited.

Labor relations. The public employee labor relations act was amended to clarify the definition of a public employee to include, in addition to the State and the board of regents of the University of Minnesota, the governing bodies of political subdivisions that have final budgetary approval authority with respect to employees. Also, physical and occupational therapists were added to the definition of teacher. Public employees covered by both union grievance procedures and civil service appeals procedures are now authorized to pursue redress through either, but not both, means.

Occupational safety and health. Corn detasselers who leave the worksite because of injury, illness, or discharge must be furnished transportation to the pick-up point and be paid for the time returning there. Employers of corn detasselers must provide an accessible water supply in the field and sanitary equipment for its use.

Other laws. Employers are prohibited from stopping or threatening to stop employee insurance coverage or pension benefits because of job performance, unless the employee has the opportunity to continue coverage by making the same contribution the employer would have made.

Missouri

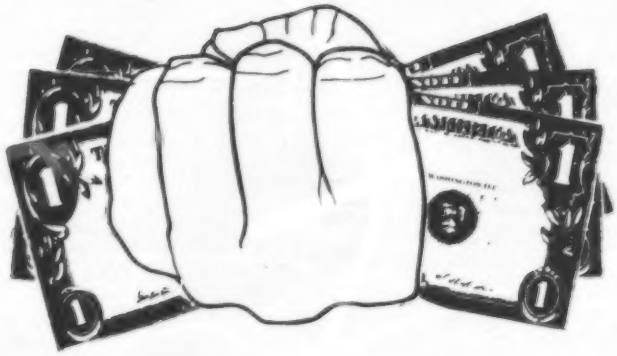
Equal employment opportunity. Discrimination in employment based on a handicap that is unrelated to ability to perform the job was prohibited.

Labor relations. An attempt to enact a "right-to-work" constitutional amendment was rejected by voters in the November general election.

Nebraska

Equal employment opportunity. The authority of cities and villages to enact antidiscrimination ordinances was expanded to authorize discrimination bans on the basis of marital status, age, and disability.

Resolutions were adopted that authorize various studies: to investigate and propose legislation on such topics as job sharing, part-time employment, flexible hours, parental leave, and upward mobility; to facilitate the entrance of women into the job market; to determine actions that might be taken to identify and correct



salary disparities in comparable jobs performed by men and women; and to examine and propose specific legislation dealing with the State's affirmative action efforts. The study committees are to report to the next regular session of the Legislature.

Occupational safety and health. The Department of Health was given authority to adopt regulations for the issuance of licenses to persons manufacturing, using, transporting, or possessing any source of radiation and to establish qualifications pertaining to the education and knowledge of radiation safety procedures for all users of radioactive materials. Penalties for violation include suspension, revocation, or limitation of a license.

Nevada

Wages. The labor commissioner, exercising specific authority given him in 1977, increased the minimum wage by regulation to $2.50 an hour on January 1, 1978, $2.65 on July 1, 1978, and $2.75 on January 1, 1979.

New Hampshire

Wages. The minimum wage rose to $2.65 an hour and will continue to increase each year to match Federal rates, under a prior State law which adopted the FLSA rates by reference.

New Jersey

Child labor. An 8-year minimum age for the professional employment of minors in theatrical productions was removed. Permit requirements now specify that minors not be endangered by the working conditions and that physical examinations of minors under age 8 include vision

screening if practicable. The department of labor is to prescribe safeguards for the working conditions, supervision, and education of workers under 16 with special attention to those under 6. It will be unlawful to employ persons under 16 to perform an indecent or immoral exhibition.

Equal employment opportunity. It was made an unlawful employment practice to deny any blind person a job or promotion unless the blindness would prevent performance of the job.

A commission, composed of four legislative members, four public members, and the director of the Division on Women, was created to study sex discriminatory provisions in the statutes and to recommend necessary revisions to the Governor and legislature.

Displaced homemakers. The Office for Displaced Homemakers was created, within the Commission on the Status of Women, to research the problems of displaced homemakers and to plan job counseling, training, placement, and other programs for them.

Other laws. The apprenticeship council was placed in the Employment Services Division of the newly created Human Services Department, and a reduction from 4,000 to 2,000 was made in the required hours for an apprenticeship agreement in any given trade.

New Mexico

New York

Wages. The minimum wage rate for nonagricultural workers was increased from $2.30 to $2.65 an hour with additional increases to $2.90 on January 1, 1979, $3.10 on January 1, 1980, and $3.35 on January 1, 1981. Corresponding proportionate increases were made in allowances for tips, meals, lodging, and other specified rates in existing wage orders.

Procedures were clarified to establish that a hearing is not required before prevailing rates are determined or redetermined for public works but is necessary in an investigation of failure to pay prevailing rates.

Child labor. A minor applying for an employment certificate will now be issued a certificate of physical fitness if a physical examination has been made within 12 rather than 6 months. If a known health problem exists at the time of application, another examination may be required by the issuing authority.

The employment or exhibition of a person under 16 years of age as a rope walker, wire walker, horse rider, gymnast, or acrobat now will be permitted if the minor is protected by safety devices or protective equipment and has a child performer permit. The liquor authority may now issue permits to persons under age 18 to appear as entertainers on premises licensed for retail sales. Among other requirements, a parent or guardian must be present during the minor's appearance.

Equal employment opportunity. The industrial commissioner is to submit to the Governor and legislature an annual report on the status of older workers, including those over age 65. The report will include the employment needs of older workers, ability of the State employment service to deal with their problems, economic impact of unemployment among them, and need for affirmative action. It also will make recommendations for improved programs or change in laws or regulations.

Labor relations. Public employees who violate the strike prohibition are no longer subject to the penalty of 1-year's probation with loss of tenure; other penalties were retained.

Jurisdiction over improper public employer and employee organization practices in New York City was transferred from the Public Employment Relations Board to the New York City Board of Collective Bargaining.

The civil service law was amended to permit employees to be represented by a union representative or counsel at disciplinary hearings, instead of only by counsel.

Police officers may not be penalized for failure to meet an established quota of traffic violations, other than parking, standing, or stopping.

State employees subject to agency shop deductions may now, in addition to demanding a refund of any portion of the deduction used for activities not directly related to terms and conditions of employment, also demand a refund for expenditures of a political or ideological nature.

Occupational safety and health. The industrial commissioner is to survey political subdivisions to determine the extent of capital expenditures requir-

ed to conform to Federal OSHA standards and the availability of Federal funding for such projects. Findings are to be submitted to the Governor and legislature by February 15, 1979.

Work on an unsafe machine or in a dangerous area tagged as such by the industrial commissioner may not be resumed under any circumstances until reinspection by the commissioner and removal of the tag.

The Department of Environmental Conservation was given authority to regulate the transfer, storage, and disposal of hazardous wastes.

The time for municipalities to elect to enforce safety and health standards for places of public assembly, instead of the State labor department, was extended until July 1, 1979.

Other laws. The Administrative Regulations Review Commission, composed of eight legislators, was established to review the rules and regulations of State agencies for compliance with their legislative intent, their impact on the economy, on operations of the State and local governments, and on affected parties.

It is unlawful for an employer to conduct or require any employee or job applicant to submit to an examination to evaluate psychological stress. An employee discriminated against for filing a complaint or testifying in a proceeding relating to the use of such an examination may recover double the wages and benefits lost.

The Department of Correctional Services is to maintain a list of prison inmates who are eligible for release or parole and the vocational and training programs completed by them and to supply this list to approved prospective employers.

Promotion of business expansion for job creation and other purposes was the objective of three enactments. One enlarged the scope of financial assistance available under the economic development program of the Job Development Authority, another expanded the job incentive program through tax incentives to additional types of firms, and the third authorized the New York/New Jersey Port Authority to prepare and adopt a master development plan for the port district, taking such matters as unemployment into account.

North Carolina

Wages. An increase in the minimum wage to $2.50 an hour took effect January 1, 1978. The State wage law authorized an increase to this amount when equaled or exceeded by the Federal rate.

Wages. Calculation of time-and-one-half overtime pay for county employees who work over 40 hours is to be based on all "active-pay-status" hours, rather than hours actually worked, and county employees now may elect to receive compensatory time off on a time-and-one-half basis in lieu of overtime pay.

Minors participating in programs established under the Federal Young Adult Conservation Act of 1977 are to be paid in accordance with the State and Federal minimum wage laws.

Public works contractors are now required to furnish, on the first pay date, to each employee not covered by a collective bargaining agreement individual written notification of his or her job classification assignment and its prevailing hourly rate and fringe benefits as well as the identity of the prevailing wage coordinator. Other contractors and unions now may file complaints with the director of industrial relations alleging prevailing wage violations.

Child labor. Changes in the law included elimination of maximum hours and nightwork restrictions for 16- and 17-year-olds and conformance of restrictions for minors under age 16 to the Federal standards.

Equal employment opportunity. Any qualified person between the ages of 40 and 65 who is refused a job interview or is discharged without cause may bring a civil action against the employer on the basis of age discrimination, except where arbitration is available.

Labor relations. Use of successor employer clauses in private sector collective bargaining agreements will be permitted for employers not covered under the National Labor Relations Act or Railway Labor Act.

Private employment agencies. The required surety bond for employment agencies was increased from $1,000 to $5,000, and temporary help services meeting certain requirements were specifically exempted from the entire law.

Ohio

Oklahoma

Wages. The tripartite Wage and Hour Commission, formerly responsible for rulemaking and administration of the minimum wage law, was abolished and its powers vested exclusively in the labor commissioner.

Prejudgment garnishment is now specifically permitted for support in divorce proceedings, and court-ordered garnishment of up to one-third of earnings for child support was authorized, with a 25-percent maximum otherwise applicable.

Child labor. A prohibition against work in theaters and bowling alleys by persons under age 14 was eliminated; any performer under age 15 must be accompanied by a parent who remains on stage during the performance.

Labor relations. The law establishing procedures for the recognition of professional organizations representing teachers was amended: separate petition and election procedures were established for school districts with an average daily attendance of 35,000 or more. Principals and assistant principals of school districts of this size will constitute separate collective bargaining units.

Occupational safety and health. A mining safety law, which specifies safety standards for miners, was enacted and will be administered by the State mining board. Standards included governing storage, transportation, and use of explosives; mine inspection; first aid; and certification of general managers, superintendents, mine foremen, shot firers, electricians, and repairmen. Certain provisions that required fire escapes on public and private buildings were repealed.

Displaced homemakers. A displaced homemakers act authorizes the Board of Vocational and Technical Education to establish a pilot multipurpose service center to provide job counseling, training, support, and educational services. The center will be operated in an area vocational-technical school and staffed whenever possible by displaced homemakers.

Other laws. Discharge of an employee because of jury service was made a misdemeanor punishable by a fine of up to $5,000, and the employer was made subject to civil action by the employee for damages.

Wages. The minimum wage rate was increased from $2.30 to $2.65 an hour, with future increases to $2.90 on January 1, 1979, $3.10 on January 1, 1980, and $3.35 on January 1, 1981. These increases are identical to those under the Federal law. The maximum rate, with a further reduction to 40 percent on January 1, 1980. Hotel, motel and restaurant employees will now receive overtime pay for work in excess of 44 hours a week, rather than 48, with a reduction to 40 hours scheduled for January 1, 1979.

When employees are paid, railroads must furnish each with a separate listing of daily wages and how they were computed or be subject to a monthly penalty of up to $200 per employee.

Child labor. A new physical examination to obtain each reissuance of an employment certificate is no longer required. Minors now need present only a promise of employment.

Constraints for girls, formerly more restrictive than for boys, were removed in street trades employment, in certain messenger work, and as caddies: all minors in such jobs are now subject to the same laws.

Agriculture. A new comprehensive, seasonal farm labor act was enacted. It establishes permissible hours of work, assures the payment of wages, provides for equal pay, and requires payment of the State minimum wage. Persons under 14 may not work as seasonal farmworkers and those age 14 to 17 were made subject to the child labor law, including a prohibition against working during school hours. Other provisions require annual registration of farm labor contractors, set forth such contractor's duties and prohibited activities, establish requirements for the certification of labor camps, mandate visitation rights, and prescribe penalties for violation.

Equal employment opportunity. Sex-designated language was eliminated from numerous laws, such as those governing public appointments, entitlement to employment benefits, and employment rights.

Other laws. An employer may not dismiss or threaten to dismiss any employee because of required jury duty. In case of violation, the employee may sue for damages and may seek injunctive relief to secure reinstatement.

Rhode Island

Wages. The minimum wage law was amended to exempt from the overtime pay requirement any salaried employee of a nonprofit, national, voluntary health agency who chooses compensatory time off rather than overtime pay. A special legislative commission was established to study the feasibility of a special minimum wage for handicapped workers and to report to the general assembly by March 1, 1979.

Labor relations. The State labor relations board was expanded from 3 to 5 members by adding additional union and industry representatives.

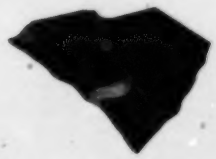
Employers who willfully fail to make payments within 60 days to a health, welfare, or pension fund, as provided by a union contract, now are subject to a fine, imprisonment, or both. Prior law provided for a fine only with no time limit specified.

Displaced homemakers. A displaced homemakers act authorizes the director of community affairs to establish a pilot multipurpose service center to provide displaced homemakers with counseling, training, education, and placement services to help them find employment. The center is authorized until January 31, 1980.

Other laws. An intergovernmental relations council was established to study the relationships between and among the local, State, and Federal governments and to consider methods of fostering better relations among these three levels and among local governments.

A legislative commission will study the feasibility of creating and expanding flexible time, part-time, and job-sharing employment in State employment positions and of developing a program to encourage such job opportunities in the private sector.

South Carolina



Equal employment opportunity. The name of the Commission on the Status of Women was changed to the Commission on Women. Among other duties, the commission was empowered to receive and disburse State and Federal funds.

Private employment agencies. Agencies are now required to guarantee placed applicants a job lasting 90 days, with fees prorated over the 90-day period, if employment terminates for any reason. Applicants not reporting for work for any reason owe no fee.

Other laws. A law was enacted permitting the exchange of employees between and among Federal, State, and local governments with their consent and for a period of up to 4 years.

South Dakota

Wages. The minimum wage was increased from $2 to $2.30 an hour.

Labor relations. The public employee bargaining law was amended to exclude the following from all but the grievance provisions: elected officials, members of any board of commission, most administrators, students employed part time, temporary employees, the State National Guard, and judges and court employees.

Other laws. A resolution was adopted requesting the Legislative Research Council to study the feasibility of developing and financing a comprehensive vocational rehabilitation referral center.

Tennessee

Wages. The prevailing wage law was amended to require *annual* wage determinations for highway construction, but biennial determinations were retained for building construction. Also, the Prevailing Wage Commission is now authorized to make an adjustment of up to 6 percent in the determined wage to reflect changing economic conditions.

Withholdings from employee's pay for private pension and retirement plans are to be deposited into a separate trust fund which can be used only for providing benefits and administrative costs.

The amount of wages exempt from garnishment was increased from 50 percent of weekly earnings up to $50 for heads of household and 40 percent weekly up to $40 for other persons to 75 percent of disposable weekly earnings or 30 times the Federal minimum wage, whichever is greater, for all debtors.

Members of the general assembly will now be subject to wage garnishment in the same manner as are other public employees.

Child labor. Several significant changes were made in the child labor law, including replacement of employment certificate requirements with an employer obligation to require proof of age, elimination of maximum hours and nightwork restrictions for 16- and 17-year-olds, and easing nightwork restrictions for 14- and 15-year-olds.

Equal employment opportunity. A comprehensive antidiscrimination act was enacted covering both public employers and private employers of eight workers or more. The new law prohibits discrimination in employment by employers, labor organizations, employment agencies, and joint apprenticeship committees on the basis of race, creed, color, religion, sex, or national origin. The Commission for Human Development was given enforcement authority, including authority to order hiring, reinstatement, and back pay.

Labor relations. A new law provides for collective bargaining between boards of education and professional school employees. Good-faith bargaining is required by both parties, and strikes are prohibited. Negotiable items include wages, fringe benefits, grievance procedures, and working conditions. Impasse procedures consist of mediation, factfinding, and advisory arbitration.

Other laws. Employers of five employees or more now will be required to excuse from work any employees summoned to jury duty and to pay them their usual wages less any jury fees received. The Institute for Labor Studies within the labor department, and a Labor Educational Advisory Committee were established to develop an association between labor and higher education and to provide educational services to workers throughout the State.

Utah

Wages. By administrative action, minimum wage rates were increased for the retail trade, public housekeeping, restaurant, laundry, cleaning, dyeing and pressing industries, and the geographic rate zones were reduced in number. The new minimum in Salt Lake, Weber, Utah, and Davis counties and in all cities with a population of 5,000 or more was set for $2.30 an hour on April 1, 1978, with further increases to $2.45

Vermont

Wages. The minimum rate was raised from $2.30 to $2.65 an hour, with future increases to $2.90 on January 1, 1979, $3.10 on January 1, 1980, and $3.35 on January 1, 1981. By wage order action, the maximum tip credits were also increased.

The wage payment law was amended: employer liability to employees for actual damages caused by failure to pay benefits required by a written agreement was established; any action for lack of payment of wages is required to be brought within 2 years of the cause of action; employers must pay discharged employees within 72 hours rather than immediately; and employees are permitted to authorize the deposit of their wages through electronic transfer to a bank of their choice.

Equal employment opportunity. The State commissioner of personnel is required to adopt rules and procedures to facilitate employment of the handicapped. He may waive certain requirements which exclude an otherwise qualified person to give him equal access to employment and may require certification that the applicant is physically qualified to do the work without hazard to himself or to others.

Other laws. To enhance employment opportunities in the State, the secretary of development and community affairs is authorized to contract with employers who, under specified conditions, will employ qualified State residents, recruited and trained by the secretary.

Elected municipal employees may now continue to serve and be elected to new terms of office after age 70 and will receive benefits accrued to the effective date of retirement.

Virginia

Wages. The minimum rate was increased from $2.20 per hour to $2.35 effective January 1, 1979.

Limits were placed on the percentage of earnings which may be garnished to satisfy support payment orders; previously there was no limit.

Child labor. Amendments to the child labor law eliminate time limits on the validity of employment and physical fitness certificates and exempt from the law, except for the certificate of physical fitness requirement, persons between ages 12 and 18 who are employed as pages or clerks in the State legislature.

A resolution requested that a joint legislative subcommittee be created to study and report on conflicts in State and Federal child labor laws and to recommend ways to resolve such conflicts and to end unnecessary employment restrictions.

Agriculture. A 15-member migrant and seasonal farmworkers commission was created as an advisory body to the Governor and general assembly. Membership will include representatives of growers, migrant and seasonal farmworkers, and crew leaders; government, public and private agencies; and interest groups or citizens concerned with migrant and seasonal farmworkers.

Labor relations. Minimum criteria for State employees grievance procedures are to be established by the Department of Personnel and Training, and the Office of Employee Relations Counselors was created to furnish employees with information on grievance procedures and to investigate allegations of reprisal as a result of their use. Political subdivisions with more than 15 employees must conform their mandatory grievance procedures to standards established for State workers.

Private employment agencies. Administration of the act was transferred from the labor department to the newly created Department of Commerce, and the composition of the advisory board was changed from all agency representatives to include also representatives from consumer protection interest groups and a State official familiar with employment agency regulation. Rulemaking authority was delegated to the Board of Commerce, composed of nine citizens appointed by the Governor.

LABOR RELATIONS. The State supreme court held that the Utah Labor Disputes Act, which recognizes labor's right to collective bargaining, was not intended to and does not, vest collective bargaining rights in municipal employees.

Agency action against an applicant for a fee which the employer agreed to pay was barred, and agencies are prohibited from charging fees without a bona fide job order or without having made an appointment with the employer.

Occupational safety and health. Several changes were made in the mine safety law, including amendments to clarify required onsite emergency medical care, to provide for first aid training programs for mine employees, and to strengthen various provisions, including work assignments of inexperienced miners, use of cranes and hoists, storage and use of explosives, and noise levels. Other changes strengthened standards for safety lamps, roof supports, gas detection, two-way communications, and fire safety. In addition, ventilation and dust control requirements were expanded, and the employment of fire bosses is now required in all mines rather than only in those classed as "gaseous" or "gassy."

Other laws. The required period of on-the-job work experience for apprentices was reduced from 4,000 to 2,000 hours, "apprenticeable occupation" was defined and the apprenticeship council was given authority to review decisions of local and State committees adjusting apprenticeship disputes and to initiate deregistration proceedings in appropriate instances.

The Department of Welfare was authorized to establish projects through any governmental unit or private, nonprofit agency to provide work experience for welfare recipients. Refusal to accept work experience will be grounds for denial of public assistance.

Both the Department and Board of Vocational Rehabilitation were reconstituted as the Department and Board of Rehabilitative Services, and the duties, responsibilities, and services of each were expanded.

West Virginia

Wages. As a result of pending litigation on the question of wage and hour law coverage of public safety department members, a law was passed explicitly exempting such members from the law but providing for supplemental payments to them in lieu of overtime pay. A similar law was enacted exempting State conservation officers following a State supreme court decision which deemed them subject to the wage and hour law.

Wisconsin

Wages. By administrative action, minimum hourly wage rates were increased from $2.10 to $2.25 effective August 1, 1978, with further increases on January 1 to $2.80 in 1979, $3 in 1980, and $3.25 in 1981. Differential minimums in farmwork and for workers under age 18 also

were raised. Permissible tip credits, formerly set at 25 percent of the minimum wage, were converted to a rising scale of dollar amounts, reaching in 1981 the equivalent of a 40-percent credit, as in the Federal FLSA.

The wage payment law was amended to exempt from the frequency of payment provision school district employees who voluntarily request payment over a 12-month period and employees covered by collective bargaining agreements that establish different payment periods.

Equal employment opportunity. An employee who quits work because the employer made employment, compensation, promotion, or job assignments contingent upon consent to sexual contact or intercourse will not suffer loss of benefits. In addition, such activity by any employer, labor organization, or licensing agency now may be the basis for a complaint of sex discrimination.

Pilot grants are to be given to nonprofit employment facilities that employ the developmentally disabled in the manufacture of marketable products.

Displaced homemakers. A displaced homemakers act provides for the creation of a multipurpose center to provide counseling, training, education, and placement services to help displace homemakers seeking employment. Whenever possible, the center will be staffed by displaced homemakers.

Other laws. An effort is to be made to place persons who are recipients of Aid to Families with Dependent Children (AFDC) and are registered with the work incentive program in part-time jobs that will provide training that may help them become self-supporting or where the earnings combined with child support payments will result in removal from the AFDC program. A mandatory work experience program was established for Indians receiving public assistance.

Employers now are required to grant employees a leave of absence without loss of time in service, seniority, or pay advancement while on jury duty. Public and private employers must grant employees serving as election officials time off without penalty, except deduction for time lost, for the entire 24-hour period on election day, if such employees give 7 days notice of application for such leave.

FOOTNOTES

1. The legislatures did not meet this year in Arkansas, Montana, Nevada, North Dakota, Oregon, and Washington. Sessions were held in Alabama, Colorado, Indiana, Mississippi, New Hampshire, North Carolina, Texas, Utah, and Wyoming, but no significant labor legislation was enacted. Puerto Rico and the Virgin Islands were not included in the study.

For a discussion of changes in workers' compensation, see Gerri Minor, "Workers' compensation laws—key State amendments of 1978, *Monthly Labor Review*, January 1979, pp. 43-50.

Age Structure Evolution

The overall aging of the population of the United States will continue to 1985, with the median age increasing beyond 31 years under both projection sets. By 1985, America's population will have grown by between 13.8 million and 17.7 million people from its 1976 base. The great baby boom bulge will have begun to enter the 35 to 44 years of age sector, generating a 5.7 million person increase in this cohort. At the same time, the baby boom people will also dominate the 25 to 34 years of age sector, which will expand by 3.7 million people. The elderly will continue to escalate in number with a net addition of more than 2.3 million individuals over the age of 65 . . . . . There will be a continuation of the marked decline in the school-age population: a decrease of somewhere between 2.5 million and 3.9 million individuals. Equally significant, however, is the maturation of the baby bust cohort, which will clearly and specifically have an impact on the Nation's institutions of higher learning. The number of people between the ages of 18 and 24 years will decline by more than 1.6 million. A corollary to this impact will be a decline in the number of newcomers to the job market . . .

When we contrast the age structure profile of America's population in 1976 with that of 1985, the scale of the transformation becomes evident. There will be a growth of more than 4.4 million people over the age of 65, plus a net addition of in excess of 1.6 million people between 55 and 64 years of age. The issues of retirement, pensions, social security, and social services to the elderly will become increasingly prominent and will place pressures concerning the need to support the elderly on an economic system already facing increasing international competition.

—George Sternlieb and James W. Hughes
Current Population Trends in the United States
(New Brunswick, N.J., Rutgers-The State University of New Jersey, The Center for Urban Policy Research, 1978), pp. 25-26.

Residency for Tuition Purposes In Wisconsin

Phillip J. Hellmuth, Thomas H. Hoover, and Dorothy Igl Stepien

Abstract

Residency for tuition purposes at public colleges and universities has been a matter of concern for many years. In the last five years there have been significant rulings at various levels from the U.S. Supreme Court *(Vlandis vs. Kline* and *Elkins vs. Moreno)* to local courts.

The effect of these court rulings has been to clarify the law concerning residence for tuition purposes. This paper reviews the subject from the local perspective of the Wisconsin jurisdiction and the University of Wisconsin-Madison. Acceptable and required processes are discussed and illustrated by appropriate court cases. The paper will prove valuable to anyone charged with determining residency for tuition purposes or in revising statutes and procedures involved in this matter.

I.

Residency for tuition purposes is a problem of national scope. As opposed to other kinds of residence, this special status is governed in every state in the United States by separate laws or administrative rules. It has been the subject of local and national court cases from which have emerged certain facts which are instructive both to those who are affected by the laws or rules and to those who must administer these laws and rules fairly in the interest of all concerned. In general, the interested parties include students, whose fees are assessed on the basis of residency tests; institutions, which must implement, publicize, explain, and defend the application of existing rules and laws; the state, whose responsibility it is to provide higher education for its citizens at reasonable costs, while protecting its taxpayers from subsidizing students from other states who seek to attend its institutions and; finally, the taxpayers themselves who ultimately must fund the state's portion of educational costs in public higher educational institutions.

Considerations of facts regarding residence for tuition purposes often cause complications, but the parameters emerging from the court cases are rather simple and coherent:

> Higher education has not been found to be a fundamental right; in fact, the U.S. Supreme Court has declared that education is not a fundamental right.[1] Had the court held otherwise, the ability of states to regulate student admissions and student fees would have been severely limited.
>
> States have the right to apply different rates of tuition to students, depending on whether they are or are not residents of the state.[2]
>
> In pursuance of this right, states may establish tests to determine whether a given person is a resident of the state for tuition purposes.[3]
>
> These tests must be reasonable, generally applicable, and may not establish an irrebuttable presumption of nonresidency.[4] However, a durational period of up to one year during which a new state resident may be charged the nonresident tuition is appropriate.[5]

This article discusses the Wisconsin Statute governing residency for tuition purposes (36.27 Wisconsin Statutes) and its application. Wisconsin has established a solid basis for residency determinations resting on legal precedents from the landmark United States Supreme Court decisions through Wisconsin State Supreme Court and local Circuit Court cases.

At the University of Wisconsin-Madison, the issue of residence for tuition purposes is very important due to the large population of nonresident students. The differential in fees for each full-time student amounts to approximately $1,500 per year. Figures for first semester 1977-78 reflect more than 10,000 nonresident students at University of Wisconsin-Madison. With so large a nonresident population and such a great fee differential, it is inevitable that many problems regarding residency arise.

The Wisconsin experience with determination of residency for tuition purposes can be instructive to persons in any state with campuses having large numbers of persons from other states in their student populations. Research shows that the general type of residency determination criteria and legal impact are similar in all jurisdictions in the United States.[6] Understanding the development of laws and procedures determining residency for the State of Wisconsin over the past years will provide a good basis for dealing with the laws or rules within other jurisdictions.

The present law governing resi-

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dency for tuition purposes in Wisconsin is Section 36.27 of the Wisconsin Statutes. This statute has evolved over the years as a result of judicial decisions and pressures from students and their parents, state officials and legislators, and university faculty members. It is also a result of efforts by administrators at the University of Wisconsin-Madison to deal fairly with problems of residency determination for tuition purposes. In the process, constitutional issues have been carefully considered and specific language has been adopted to avoid excessive rigidity in statutory application.

In Wisconsin the first statutory directive for free tuition for state resident students was enacted in 1866,[7] and legislative authorization for the Regents to prescribe tuition for nonresident students was well established by 1878.[8] Originally these laws were designed as an aid to the University Registrar in the assessment of nonresident tuition charges. Nonresident tuition has been assessed since at least 1900.[9] The requirement for such fees is stated in the University catalogue of 1907-08:

> Tuition is free for all students from the State of Wisconsin. The liability of students to pay tuition charges, as distinguished from incidental fees, shall be determined by the Registrar.

Fees for that period for nonresident tuition were $20.00 per semester.[10] This was in addition to an incidental fee for all students of $15.00 per semester.[11] The requirement was not based on a separate statutory provision but was at the time a University regulation adopted by the Board of Regents.

The 1915 and 1917 Wisconsin legislative sessions enacted the first definitive statute on residency for tuition purposes. This became Section 36.16 of the Wisconsin Statutes.[12] The intent of this legislation was to assist in residency determination problems arising from the inability of students to obtain reclassification once admitted as nonresidents. The statute remained in effect until 1964 without substantive changes. The principal points covered by the statute were:

> A residence requirement of one year of continuous, bona fide Wisconsin residency preceding admission to the University, either of the student or the student's parents.
>
> A provision that admission as a nonresident student set up an irrebuttable presumption that the student was a nonresident for the next four academic years even if the student dropped out of the University and continued living in Wisconsin.
>
> A provision to remit nonresident fees for a "number of needy and worthy nonresident students," not exceeding 8 percent of the number of nonresident students registered for the preceding year.

The original statute was modified in 1957 to provide for fee remissions for an additional 2 percent of the nonresident student population of the previous year. As distinguished from the 8 percent remission, these remissions were for "equitable relief from the assessment of nonresident tuition."[13] The "2 percent remission" as it is now called, gave urgently needed flexibility for equity considerations.

In 1964 the statutory provisions which erected an irrebuttable presumption of nonresident status for tuition purposes for students from outside Wisconsin was modified to become a rebuttable presumption. This was before such irrebuttable presumptions were held to be unconstitutional by the U.S. Supreme Court in *Vlandis vs. Kline*.

From 1964 until July 1, 1975, the Wisconsin Statute made *residency for tuition purposes* a matter of "bona fide residence." The statute created a presumption of nonresidency for tuition purposes for students who came to Wisconsin from other states to enroll in educational institutions. The presumption could, however, be rebutted by showing bona fide residency over the entire preceding year. For adults, bona fide residency provided the basis for "residency for tuition purposes," but for minors, bona fide residency of the parents was determinative. In evaluating bona fide residency the statute required that four specific items be given consideration: work within the state, filing of state income tax returns, voter eligibility, and motor vehicle registration. These items were considered indicators, and not the sole determinants of residence.

In July of 1975 the statute underwent revisions finally emerging as the present 36.27(2). The resultant statute was carefully developed and clearly phrased in terms of a rebuttable presumption. It states:

> A student who enters and remains in this state principally to obtain an education is presumed to continue to reside outside the state and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.[14]

In addition to retaining the four above mentioned items from 36.16 in the consideration of bona fide residence, it added the possession of a driver's license and self-support and made clear that the test of bona fide residency for tuition purposes is basically a question of domicile. The heart of the statute now reads:

> In determining bona fide residence . . . the intent of the person to establish and maintain a permanent home in Wisconsin is determinative. In addition to representations by the student, intent may be demonstrated or disproved by factors including, but not limited to, filing of Wisconsin income tax returns, eligibility to vote in Wisconsin, motor vehicle registration in Wisconsin, possession of a Wisconsin operator's license, place of employment and self support.[15]

The recreated statute retained both the 8 percent and 2 percent remissions. Equitable relief in the 2 percent remission has become "relief . . . because of extraordinary circumstances." The new statute is the result of a careful legislative deliberation based upon recent judicial thinking, and it is reasonable to assume that fair and equitable University administration of the statute will bring judicial support.

The Board of Regents of the University of Wisconsin System has the first obligation to apply Wisconsin Statute 36.27 to all requests for exemption from nonresident tuition. With the legislative mandate to merge all State public institutions of higher education into a single system in 1971, the Board delegated the authority to decide the nonresident tuition appeals cases to the various institutions of the System. At the University of Wisconsin-Madison, the Chancellor formulated a Non-resident Tuition Appeals Committee to apply the statute and appointed the Registrar to chair the Committee. The Committee serves three necessary functions.

First, it hears the appeals of students who have been classified as nonresident by the Residence Counselor. Second, the Committee advises the Residence Counselors in interpreting policy in administration of law. Finally, the Committee recommends changes in policy or administration of the Wisconsin Statute to the Chancellor.

II.

The State of Wisconsin pays the portion of the educational costs for its resident students which are charged as tuition to nonresident students. It is the Wisconsin taxpayers who are served by the residency determinations process and the University, though charged with assessing fees and determining residency for tuition purposes, does not become the adversary of its students in residency determinations. The University has the responsibility to carry out the statute in a fair and equitable manner giving students the opportunity to present their cases for residency and insuring that determinations are based on all pertinent facts and circumstances. The "firing line" administration of the Wisconsin law is conducted by the Residence Counselors who are employees of the Registrar's Office at the University of Wisconsin-Madison. A discussion of some of the interpretations of the "residence for tuition purposes" status under the Wisconsin law will be helpful.

Residence under the new Wisconsin Statute 36.27(2) is similar to the understood definition of domicile; that is, the permanent place where a student lives, from which he/she only temporarily departs and from which he/she derives status as a citizen.[16] Because it is defined by the Wisconsin Statute as being based on the establishment of a permanent home in Wisconsin, this type of residence is distinguished from residency for other purposes such as voting, welfare, hunting license or marriage. This difference is often a source of confusion to students who consider themselves residents of the State of Wisconsin, but who may not be residents for tuition purposes.

The Wisconsin law requires a twelve-month waiting period before bona fide residence for tuition purposes is established. A durational period of residency prior to qualifying for tuition payment at resident rates is common to all state universities and has been specifically approved by the U.S. Supreme Court.[17] Families moving into the state frequently fail to understand the concept of a durational period, especially since they must immediately pay Wisconsin income tax on state derived earnings and may be residents of the state in every other way.

Residency for tuition purposes has a particular construction under the Wisconsin Statute for minors. Legally, a minor's residence follows that of the parents. Therefore, any minor student whose parents have been bona fide residents for the twelve months next preceeding the beginning of any semester or session for which that student registers at the University will be residents for tuition purposes. There are similar provisions for minor children whose natural parents are divorced or separated and for orphans of Wisconsin residents.

Legal guardianship of a minor student is important in determining residence. A court appointed guardianship of a minor is treated under the law the same as a parental relationship; however, de facto guardianships are not recognized under the Wisconsin Statute.

This becomes a complicating factor for students whose parents are divorced when legal custody of the minor child is awarded to a parent who lives outside the State. Under the law, such a student cannot be considered a resident because the legal guardian is not a Wisconsin resident. Frequently, the facts and circumstances of such cases result in a remission of nonresident tuition.

In 1972 the age of majority in the State of Wisconsin was changed from 21 to 18. As a result, most students who attend the University are legal adults. Adult students who are residing outside of the State of Wisconsin, but whose parents have moved to this state and have become residents, may often be found nonresidents for tuition purposes since they must establish residence in their own right. However, in particular cases, a student's own facts and circumstances surrounding the move may lead to the conclusion that a constructive move to Wisconsin was made with the parents, hence the student may also be a resident of the State.

There is a statutory exemption which provides that any student who is a graduate of a Wisconsin high school and whose parents are bona fide residents of the state for twelve months next preceding the semester or session for which the student registers at a state supported university is entitled to be classified as a Wisconsin resident for tuition purposes. Many students fit under this section even though they may have been living and working in other states for many years.

Students frequently assume that marriage to a Wisconsin resident automatically establishes Wisconsin residence. The current legal trend, however, is to consider individuals in their own right.[18] Therefore, married students must establish Wisconsin residence independently of the residence of the spouse.

Under the Statute a problem arises when the family of a minor student moves out of the state. The student, having lost residence in Wisconsin but not having had time to establish residence for tuition purposes in a new state, is in an inequitable situation. At the University of Wisconsin-Madison, a remission of out-of-state fees is routinely awarded for one year from the date the parents of a minor moved out of the state. This frequently allows the student to attain majority and establish legal Wisconsin residence.

In determining residency of a foreign student, the visa status becomes critical. Students with permanent immigrant status or refugee status can establish residence in the state by meeting the provisions of the Wisconsin Statute.

In determining residence for tuition purposes for persons who return to Wisconsin after temporary departures such as school attendance, work elsewhere or military service, cognizance is taken of evidence showing continuity of state residence and demonstrated intent to return to the state. Persons who leave the state for temporary periods of time should avoid the establishment of ties with other states and take steps to retain Wisconsin residence. For instance they should vote by absentee ballot in Wisconsin, retain their Wisconsin drivers license and motor vehicle registration, report all of their income to the State of Wisconsin and satisfy any tax obligations that might be incurred as state

residents. Having satisfied the foregoing obligations these people continue to be residents for tuition purposes.

Involuntary detention in the State of Wisconsin does not constitute residence. The Wisconsin Statute does provide for exemption from out-of-state fees for persons in armed forces or engaged in alternative service and their dependents. These people are not classified as residents for tuition purposes. Persons incarcerated or involuntarily detained or committed to hospitals do not establish residence by the mere fact of being in the state under these conditions.[19]

The most difficult concept of the Statute to administer and for students to understand is the clause which states, "A student who enters and remains in this state principally to obtain an education is *presumed to continue to reside outside this state*, and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence."[20] (Emphasis added.) When a student has been enrolled full-time in an educational institution in Wisconsin during the year he/she claims Wisconsin residence, the burden of proof to establish bona fide residence for the entire year is placed on the student. In establishing bona fide residence the Statute provides guidance in evaluating intent. "Intent may be demonstrated or disproved by *factors including, but not limited to*, filing of Wisconsin income tax returns, eligibility to vote in Wisconsin, motor vehicle registration in Wisconsin, possession of a Wisconsin operator's license, place of employment, and self support."[21] (Emphasis added.) While the Statute suggests several enumerated criteria, it is important to note that these criteria are not conclusive in making residency decisions. The student has wide latitude in presenting factors and circumstances germane to the case and all relevant evidence is considered. Cases involving the presumption make up the majority of the cases that eventually end up in Appeals hearings.

The Nonresident Tuition Appeals Committee generally hears appeals for the approaching semester in the month preceding registration and at any time throughout the particular semester or summer session. It is only under very unusual circumstances that the Committee will hear a residence appeal retroactively to a previous semester, and there is a standing rule that residence status will not be awarded retroactively beyond the current fiscal year.

Students who wish to appeal their residence classification first discuss their case with a Residence Counselor. The counselor is empowered to determine residency questions and, after the discussion, may find it appropriate to award residence for tuition purposes. If the Residence Counselor feels that either there is insufficient information to award residence for tuition purposes or if in the counselor's judgment the information presented is insufficient on its merits to award residence for tuition purposes, the student will be advised of the decision and that a formal appeal may be filed with the Committee. The student may either appear in person or waive the right to a personal appearance for that semester. All nonpersonal appearances are considered in closed session and decided on the basis of

If the student chooses to appear in person, the appeal is decided on all available evidence, including written documents, the personal testimony of the student, statements by the legal counsel (if the student is represented), and the testimony of other witnesses if any. Personal appearances are made before the Committee in an open session which is followed by a closed session in which the case is evaluated and a decision is reached.

When a student is granted a hearing for a particular semester either in person or on the record, it is incumbent on the student to present all pertinent facts and circumstances related to the case. A rehearing is not permitted for that semester unless there is significant new evidence which was not available to the student at the time of the first hearing.

The Nonresident Tuition Appeals Committee is the final appeal body for a nonresident tuition appeal within the University of Wisconsin System. Any further appeal of the Committee's decision must be made to an appropriate legal body outside the University of Wisconsin System.

III.

It is important for state universities to operate their systems of residency determination consistent with current judicial thinking. Under current legal theory it would appear that the concept of preferential tuition at public universities based upon residence classification is viable[22] but that a student classified as a nonresident for tuition purposes must be given an opportunity to show that in fact he/she is (or has become) a state resident for tuition purposes.[23] As previously noted the Wisconsin legislature has been sensitive to judicial treatment of its statutes on residency for tuition purposes. At the University of Wisconsin-Madison three cases involving the construction and applicability of these statutes have been decided by the judiciary; two were decided in the Supreme Court of Wisconsin and one in the Circuit Court without appeal. These decisions form the basis for the administrative processes of residence classification at the University of Wisconsin-Madison.

The first case[24] involved an appeal to Circuit Court that a law student, Jerry L. Hancock, was a nonresident for tuition purposes for a particular semester. Hancock alleged that he was a resident for tuition purposes for the semester in question as well as for succeeding semesters. In the succeeding semesters he did not appeal his nonresident status through established University procedures but simply made these allegations part of his appeal to the Circuit Court. That court upheld the University's determination that Hancock was not a resident for tuition purposes for the semester in which he had appealed his case through University processes; but it also held that he was a resident for tuition purposes for succeeding semesters.

On appeal to the Supreme Court, the Circuit Court holding in regard to the nonresidency finding for the semester in which Hancock appealed his case through University processes was upheld; but the Circuit Court finding of residency for tuition purposes for succeeding semesters was reversed. The Supreme Court decision contained a lengthy discussion of the case describing the administrative mechanism by which the University determined residency for tuition purposes in individual cases and held this to be an integral part of the adjudication. Lacking the necessary review of residency for tuition purposes within the University for

semesters after the first, the Supreme Court found it inappropriate for the Circuit Court to have made substantive residency determinations for those semesters.

This important decision firmly established the legality of the University approach to the statute on residency for tuition purposes and gives specific approval to its internal delegations of authority and the administrative procedures for handling cases which arise under the statute.

Subsequent to the *Hancock* decision a case[25] arose in which the University had determined that a student, Greenberg, who had been in the state for more than three years was a nonresident for tuition purposes. The student had fulfilled all the enumerated statutory criteria by working in the state, paying taxes, voting, obtaining a drivers license, and registering a motor vehicle. The University review of the case revealed little to support a finding of residence for tuition purposes other than the mere fulfillment of the statutory items which must be considered in each case. The finding of nonresidency for tuition purposes was upheld by the Circuit Court, and no appeal was pursued to higher judicial authority. The holding in this case supports the University's interpretation of the statute and the relative weights and latitude it may accord evidence. In a larger sense it implies substantial credence to internal University decision procedures and reflects the important responsibility placed on the University, its residency counselors, and internal appeals process.

Finally, the recent decision of *Lister vs. Board of Regents of Wisconsin System and Others*[26] reaffirmed two well established legal principles in an action brought by several law students against the University to recover the difference between nonresident and resident fees. The Supreme Court construed the law students' claim to be an action for damages against the state and dismissed the case upholding the defendant's contention that claims for monetary relief were barred by principles of state sovereign immunity.

The Supreme Court held that the Registrar, a party defendant, was not amendable to suit. His action required the exercise of discretion and judgement in determining who was a bona fide resident of the state and thereby entitled to resident status for tuition purposes. In light of his function as a public officer performing a discretionary act, there was a substantive limitation on his personal liability for damages.

The three cases together with *Vlandis vs. Kline*[27] and the recent U.S. Supreme Court decision of *Elkins vs. Moreno*[28] provide a solid footing for the University of Wisconsin in the administrative determination of residency for tuition purposes. The validity of the statute has not been found wanting, the University procedures for determining substantive residency issues have been judicially approved, the wide latitude of the University in giving weight to statutory considerations and substantive issues has been established. The remedies available to aggrieved appellants have been litigated twice, and finally, the well settled doctrine of the limited liability of public officials performing discretionary acts has been found specifically applicable to University administrators for their determinations made under the statute.

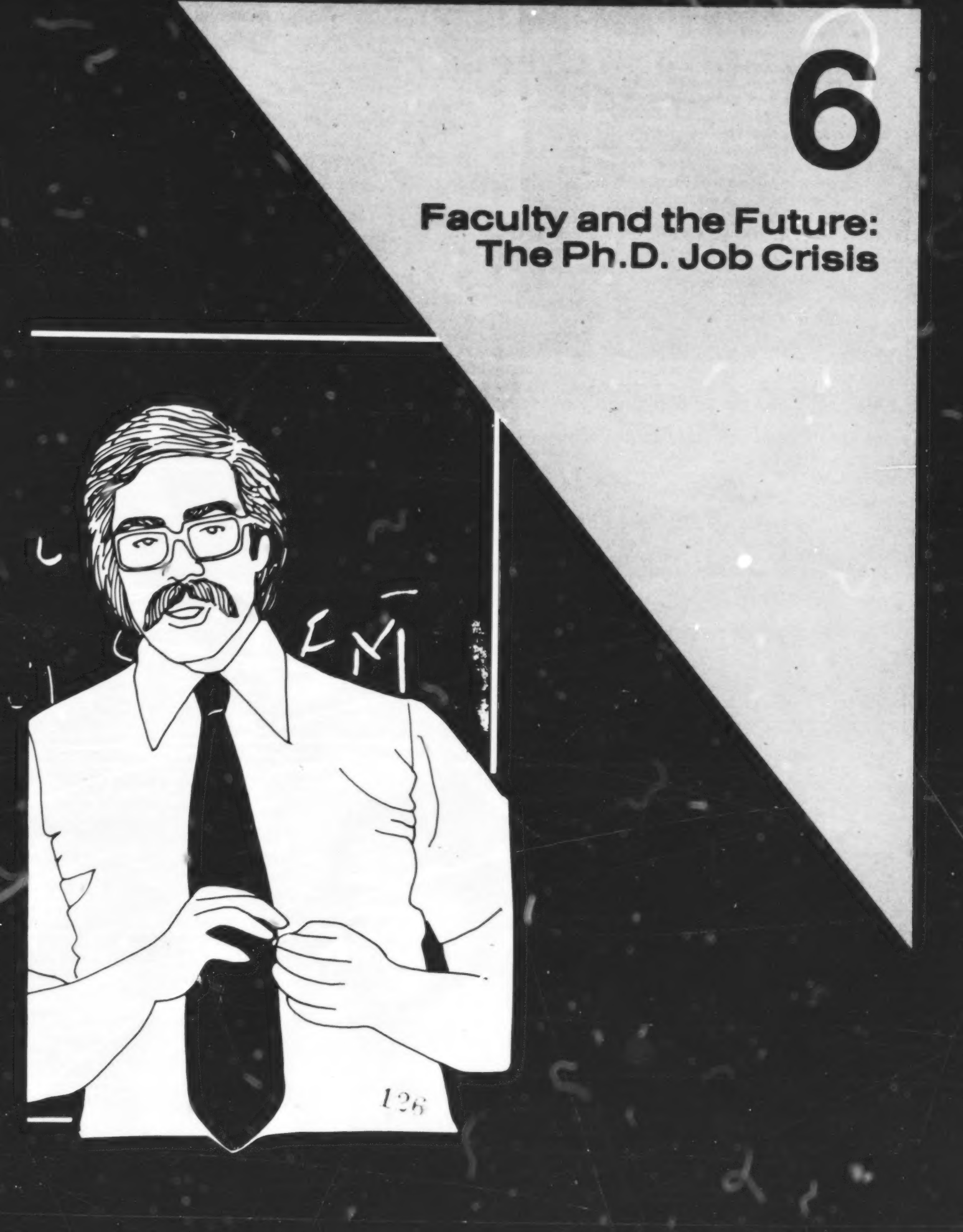
FOOTNOTES

1. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16, 45 (1973) *Sturgis v. State of Washington*, 368 F. Supp. 38 (W.D. Wash. 1973) affirmed without opinion, 414 U.S. 1057 (1973). The federal district court in *Sturgis* declared higher education not to be a fundamental right.
2. *Starns v. Malkerson*, 325 F. Supp. 234 (D. Minn. 1970), affirmed without opinion, 401 U.S. 985 (1917) also *Sturgis* op. cit.
3. *Vlandis v. Kline*, 412 U.S. 441, 93S. Ct. 2230, 37 L. Ed. 2d 63, 72-73 (1973).
4. *Vlandis*, 37 L. Ed. 2d 67, 72.
5. *Starnes*, 326 F. Supp. 234, 241; *Sturgis*, 368 F. Supp. 36, 41-42.
6. Phillip J. Hellmuth, *Residence for Tuition Purposes: A Study of the Fifty State Universities* (Unpublished doctoral dissertation, University of Wisconsin-Madison).
7. Sec. 8, Chapt. 114, *Laws of Wisconsin* (1866).
8. Sec. 388, Chapt. 25, *Revised Statutes of Wisconsin* (1878).
9. *Catalogue of the University of Wisconsin for 1902-03*; Press of Evening Wisconsin Co. (Milwaukee). Published by the University 1903, p. 47.
10. Bulletin of the University of Wisconsin, #212, general series, #10, University of Wisconsin, May 1908, p. 86.
11. Ibid. p. 87.
12. Sec. 2, Chapt. 547, *Laws of Wisconsin* (1915), Sec. 67, Chapt. 14, Sec. 1, Chapt. 359 and Sec. 2, Chapt. 453 *Laws of Wisconsin* (1917).
13. Chapt. 318, *Laws of Wisconsin* (1957).
14. *Wisconsin Statutes* 1975 (33rd edition) Vol. 1 (Prestigard, Orlean L., revisor and Thimke, Delores O., assistant revisor editors) published by the State of Wisconsin.
15. Ibid.
16. Robert F. Carbone, *Resident or Nonresident: Tuition Classification in Higher Education* (Education Commission of the States, 1970).
17. Op. cit., *Starnes*; *Sturgis*.
18. A provision which mandated automatic residence for females who married Wisconsin residents was deleted in the 1975 revision of the *Wisconsin Statutes*.
19. The Wisconsin Board of Regents Fee Notes provide that a person involuntarily detained by the courts from leaving Wisconsin will pay only resident instructional and appropriate segregated fees.
20. Op. cit., *Wisconsin Statutes*.
21. Op. cit., *Wisconsin Statutes*.
22. For brevity and to avoid unnecessary replication the reader is directed to Carbone, Robert F., *Alternative Tuition Systems*, Iowa City, Iowa: ACT Publications, 1974, Appendix 2, where a full discussion and legal analysis of relevant U.S. Supreme Court cases appear.
23. Op. cit., *Vlandis*.
24. *Hancock v. Regents of University of Wisconsin*, 61 Wis. 2d 484, 213 N.W. 2d 45 (1973).
25. This case is unreported. It appears as *Greenberg v. Board of Regents of the University of Wisconsin*, Case #143-150 Circuit Court, Dane Co., decided October 8, 1974.
26. 72 Wis. 2d 282, 240 N.W. 2d 610 (1977).
27. Op. cit., *Vlandis*.
28. The *Elkins* case was decided by the U.S. Supreme Court shortly before this article went to press. It is reported at 46 Law Week 4337 (April 19, 1978). In its decision the Court refused the request of the University of Maryland to review and overrule the constitutional principles underlying the *Vlandis* decision since federal statutory law and state common law are potentially dispositive of the *Elkins* case.

PROCESS

6

Faculty and the Future: The Ph.D. Job Crisis



The PhD Job Crisis: Past, Present and Future

W. Richard Cantwell

It is hardly news to readers of *Trends 2000* that a serious situation exists in the unemployment or underemployment of PhD's. Since the early 1970's the over-supply of highly trained job-seekers has caused increasing concern, especially to those involved in higher education, concern which has sometimes attained panic proportions. My intent, after summarizing the developments of the past and the situation in the present, is to cast a glance at the future in an effort to determine both what the situation in the next decade and a half is likely to be and to indicate what rays of hope might brighten and otherwise dark and gloomy landscape.

The ending of World War II brought with it an increased demand for college teachers. Sputnik and its psychological aftermath heightened the cry for highly trained personnel, particularly in scientific and technical fields, to such a degree that President John F. Kennedy could describe the production of PhD's as "the most pressing national problem." Institutions of higher education responded to the challenge effectively. With the aid of financial support from both the government and private sources the total number of doctoral recipients rose sharply from 20,406 in 1967 to a peak of 33,755 in 1973.[1]

During the 1960's, new PhD's had little trouble finding jobs. In the middle of the decade, the present writer had numerous job inquiries and five firm offers — and this situation was not unique. Growth in employment opportunities was sufficient to absorb the increasing supply. Furthermore, during this same period, manpower experts predicted that this happy situation would continue in the foreseeable future.[2] Only Bernard Berelson[3] as early as 1960, and Allan M. Cartter[4] played the role of Cassandra during this period in disputing the optimistic outlook for PhD supply and demand.

As the 1960's gave way to the 1970's, however, clouds began to appear on the employment horizon. In 1972, to be sure, the Bureau of Labor Statistics still rated employment prospects in the social sciences, physical sciences, biological sciences and mathematics as not less than "favorable" in any field,[5] and Folger, Astin, and Bayer predicted that between 1970 and 1990 all available PhD's in the humanities would be needed to fill teaching positions.[6] The latter survey, however, also predicted that new sources of employment would be needed in the social sciences, physical sciences, and mathematics after 1975 and in the biological sciences between 1980 and 1985. Falk and the National Science Foundation forecast excesses of PhD's ranging from 8% (in the physical sciences) to 40% (in engineering) by 1980.[7] The literature began to teem with articles calling attention to the over-supply of PhD's, and the haunted faces of job-seekers at meetings of professional societies began to disturb the sleep of department chairmen with any claim to humanity.

The worsening job situation for PhD's was not entirely due to over-supply, but was also influenced by a deteriorating economic situation. In 1970, Adams claimed that problems of PhD employment stemmed not from over-production, but rather from the inability of institutions of higher education to hire them due to financial problems.[8] Straitened economic circumstances which translated most directly into shrinking salary budgets, pressed hardest on those disciplines, namely the humanities which relied almost totally on academic employment. The sciences were not immune from fiscal pressures, however. For example cut-backs in funds for both federal and industrial research projects made prestigious research and development jobs more and more rare.

Paradoxically enough, the same economic factor which had exacerbated the situation seemed to have the possibility of correcting it, as funds for the support of graduate study shrank. In 1975 Abramson pointed out that the availability of funds to support graduate students had been a major factor underlying the PhD manpower situation, and then reported that:

> During the academic year of 1967-68 . . . a peak of about 51,000

graduate students held federally supported fellowships or traineeships, many for 3 years of graduate study. By the 1972-73 academic year, the number of students funded fell to fewer than 25,000. By early 1974, the estimate was 6,600 for the 1974-75 academic year, mostly for only 1 year of graduate study.[9]

The number of prospective PhD's was still large enough to cause alarm, however. The title of Abramson's article, from which the observations above were quoted, was "The Storm Ahead for PhD's." In it, the chilling statistic was presented that while job openings for doctoral degree workers between 1972 and 1985 were estimated at 197,000, the available supply of PhD's during the same period was projected to be 580,000 persons.[10]

Abramson's basic supply-demand figures were revised in 1976 by Neil Rosenthal. He found that for the period 1974-1985 the total supply would be 2 times larger than demand. Oversupply in specific fields would range, according to his projections, from 25% in Chemistry to 800% in business and commerce. Only in engineering was demand projected to exceed supply — by 4%.[11]

The PhD job situation has continued to be the object of scrutiny and analysis in the literature. One of the best of the recent studies is that by David A. Trivett[12], to which readers are referred for further information as well as an excellent bibliography. Trivett begins by analyzing the situation in 1977 as revealed by professional association and National Research Council placement data, concluding as follows: "... the ... data confirm that many PhD's are encountering obstacles to employment, with individual and field-by-field variation." He then offers what he calls indirect confirmation of the situation by noting 1) a decline in graduate school enrollment, 2) a decline in purchasing power of average faculty compensation and 3) a tendency of PhD's from highly rated institutions to take jobs at lesser-rated institutions, thereby displacing PhD's from lesser-rated institutions — all of which he interprets as a general softening of the job situation.

Trivett then turns his attention, as this article must do as well, to projections of future conditions. After noting Abramson's figures and Rosenthal's update of them, Trivett considers Cartter's 1976 projections.[13] These, in brief, project one-third more PhD's than needed in the late 1970's and 50% more than needed in the 1980's. Cartter adds the discouraging forecast that doctorate production will peak between 1981 and 1985, when the potential for academic employment will be at its lowest.

Since Trivett's report, an additional factor has appeared which must be taken account of here: the impact of recent changes in the mandatory retirement laws (the Age Discrimination Employment Act amendments of 1978, ADEA) on the PhD job market — particularly after July 1, 1982, when the changes will be applied to tenured faculty in educational institutions.

A recent report on the impact of ADEA by Thomas M. Corwin and Paula R. Knepper for the American Council on Education[14] presents projections more discouraging to the hopes of job-seekers in higher education than any referred to so far. Even under current conditions, few faculty openings for new faculty members are expected during the middle 1980's. If, after 1982, older professors retire at 70 rather than earlier, then their number will more than cancel out the number of expected hires. Comparing the projected numbers of employment openings under the current-policies assumption (retirement at age 65) with the retirement-at-age-70 assumption, one finds little difference during the first few years: in all, there will be 3.8% fewer job openings in the 1978-1982 period. After that, the retirement-at-age-70 projections show a precipitous decline in the number of new faculty members hired. For six years after 1982, no new openings are projected to be available and recovery will begin only in 1989. Over the entire 1983-1990 period, the number of open-

ings is 65.3% less under retirement-at-age-70 than under current policies.

The Corwin-Knepper report operates on a "worst case" assumption. By the authors' own admission, their projections indicate the maximum impact that the changes in the mandatory retirement laws could have, and they state that employment trends projected under their retirement-at-age-70 assumption "could not conceivably be borne out by future events."[15] They caution, further, that institutional planners should be aware that their findings represent a national picture which may have only limited applicability to the situation of any particular college or university. Nonetheless, it seems that their projections represent a useful starting point for a consideration of the ADEA amendments, even if, as is probable, their theoretical findings are modified by practical experience gained by the passage of time.

Another recent report on the effects of the ADEA amendments is one by a Special Committee on Age Discrimination and Retirement of the American Association of University Professors.[16] Noting the trend toward early retirement clearly reflected in data provided by TIAA-CREF, the AAUP group did not proceed from the assumption of universal retirement at 70. Rather, the Special Committee based its analysis on two separate assumptions, the first on that of the maintenance of a constant faculty size, the second on that of the maintenance of a constant compensation budget. Its conclusions were as follows:

> For those who think in terms of faculties of constant size, the percentage reductions in new hires, while large in the transition period (1982-1987), quickly diminish to rather modest declines. Compensation costs rise by a few percentage points which, though not insignificant, do not appear large enough to wreak havoc on most institutions . . . Were an institution to adopt a policy of keeping the compensation budget constant, there would have to be reductions in new hires even without the retirement age change. With it, new hires would decline more substantially, faculty size would have to fall in some cases, and layoffs would be required in order to adjust. Faculty size would decline by as much as 5 percent by 1987.[17]

The AAUP Special Committee report, like that of Corwin-Knepper, noted that the change in the laws will fall unevenly — specifically depending on the age-mix of the faculty, the ratio of senior to junior compensation, and institutional financial stability. The report ends by first urging institutions to use the period between now and July 1, 1982 to study the likely impact of the Act upon their local operations, and second by urging more detailed study of aggregate effects of the change by the AAUP in association with leading institutional organizations.

At least one step in the latter direction is already being taken. A joint committee of the Association of American Colleges and the AAUP is currently engaged in revising the 1979 revision of the AAUP Statement of Principles on Academic Retirement and Insurance Plans, paying particular attention to the ADEA amendments. Deliberations of the joint committee began in October of 1978, and it is hoped to present the revised statement to both the AAC and AAUP membership in the near future.

Before passing on to the final section of this report, a few further observations are in order. Unemployment — in the starkest sense of that word — is only one aspect of the PhD job crisis. In fact, actual unemployment of PhD-holders is far below the national average. According to statistics published by the National Research Council, as of February 1977, an estimated 3300 PhD's in science and engineering were unemployed and seeking employment, an unemployment rate of 1.2% of the labor force. The percentage of the labor force represented by humanities PhD's who were unemployed and seeking employment at the same time was higher, 2.9%, but was still low as such figures go.

Underemployment, rather than actual unemployment, of PhD's is the more noticeable phenomenon. Although it is difficult to define with any precision exactly what constitutes a "PhD-type job", the Bureau of Labor Statistics made the effort to quantify the degree of underutilization by using the concept "type of job not traditionally filled by PhD's" during a period of time when there was a relative balance of supply and demand such as occurred during the 1970's. Using this yardstick, the BLS estimated that over the period 1970-1976 around 83,600 PhD's enter nontraditional fields; this number represented 47% of the estimated 178,100 PhD's who entered employment during that period.[19]

Underutilization puts further pressure on an already tight job situation as many of those in "non-traditional" fields continue to seek employment in their "traditional" academic sphere. Whether these individuals are suffering from legitimate job dissatisfaction — there are numerous horror stories of PhD's pumping gas, driving cabs, etc. — or are simply unable to free themselves from the stereo-typical view of what they "ought to be doing" is beside the point. The fact is that new PhD's find themselves competing not only with each other, but with recent and not so recent recipients of doctorates who are seeking to find positions in higher education. In the fall of 1977, the American Historical Association polled 144 PhD-granting history departments in an effort to collect information on the placement of historians during the 1976-77 academic year. The AHA survey revealed that there were actually more positions available than there were PhD recipients of that year to fill them. The "surplus", however, was more than swallowed up by the entry into the job market of previously unemployed PhD's, recently unemployed PhD's (37.4% of 1975-77 position were temporary), and those without PhD's. The number of teaching positions filled did not equal the number of degree recipeints competing for them, and nearly one-third of those who found jobs did so in a non-teaching area. More concretely, the number of history PhD's granted by responding departments totaled 752; job seekers, however, numbered 1605, and only 842 of these found employment, either academic or non-academic.[20]

Discouraging though they are for the job-seeker, the AHA figures seem a fair summary of where we are, or at least of where we were in the very recent past. Clearly, as things stand now there is an over-supply or an under-demand for PhD's in their traditional roles. What of the future? Are there any signs that either supply or demand factors will change? If so, how and when? If not, what can be

done to improve the employment situation in higher education?

Traditionally, several factors influence aggregate demand for college faculty, factors which may be broadly divided into undergraduate enrollment, graduate enrollment, the financial state of institutions and student-faculty ratios, and government investment in research and development. Of these, undergraduate enrollment is probably of the most concern to the majority of new PhD's. Here, a number of considerations affect the size of the undergraduate body. None are unimportant, although some — personal and parental goals and expectations or public perception of the value of a college education, for example — are difficult to quantify. Of overriding importance is the raw size of the traditional college-age population, and it is precisely here that the outlook for the immediate future looks bleakest: demography is against the job-seeker. The number of 18-year olds in the total population will drop by 15% from 1975 to 1985 and another 10% by 1992.[21] Clearly, traditional demand will not be forthcoming.

It is possible than non-traditional demand can be stimulated to some degree and that some of the slack can be taken up in this way. The increased enrollment of adults and other groups, not traditional customers of higher education, may well help to temper the demographic wind to the shorn academic lamb. Whether or not the pursuit of such non-traditional sources of a student body is feasible for a given educational institution depends, of course, on its own analysis of its location, mission, etc., but the possibilities should be carefully studied before the demographic situation deteriorates still further.

It is quite possible, that in order to attract a non-traditional student body, an institution's whole mission will have to be redefined, new programs developed in accordance with the perceived interests of the new student pool, and old programs cut back or eliminated. It is not possible to be specific here owing to the wide variety of educational institutions in this country. Again, however, analysis of the present situation and planning for the future is not only the better part of wisdom but may be a question of survival.

If demand for academic services can be increased in the lean years to come, well and good. If not, then clearly something must be done either to reduce the number of graduate students or to find alternative areas of employment for them once they have their PhD's in hand.

In both regards, the professional associations can be of immense service and a number of them have been. Indeed, some of the associations have been aware of the problem for some time and long ago began to take steps to meet it. For example, in a paper presented at the 63rd Annual Meeting of the Association of American Colleges in New Orleans in February 1977, Norman E. Bowie described the reactions of the American Philosophical Association:

> By the early 1970's, it was clear to officials of the American Philosophical Association that a genuine job crisis for philosophy PhD's was developing. Since our attention had been drawn to the statistical analysis of Allan Cartter and others, we were convinced that the excess supply situation was not a temporary one. Job placement became a central concern of the Association. The national office of the APA published a job vacancy booklet and assumed responsibility for convention placement facilities at the three annual meetings. Special committees were formed to investigate opportunities for expanding or introducing philosophy into the curriculum of community colleges, high schools, and even elementary schools. To cut supply, the Board of Officers drafted a letter to prospective graduate students which alerted them to the empoyment situation and in effect told them to think twice before choosing philosophy as a career.[22]

In the intervening years, the APA has continued these activities. The letter to prospective graduate students has been revised from time to time, making the warning more severe to reflect worsening conditions. In addition, according to APA sources, the letter has recently begun to emphasize that teaching is only one among many career options for which graduate education in philosophy is valuable, and the Association itself has become more active in opening up more administrative and non-academic positions for philosophers. One of the standing committees of the APA, "Placement", was renamed "Career Opportunities" and was divided into two subcommittees. The first is concentrating on ways to bring more philosophers into the non-faculty part of a college or university. The second has been active in several ways, offering individualized career counseling at national meetings by philosophers who are non-academically employed, sponsoring panel discussions on the multi-purpose vocational character of an advanced degree in philosophy and sponsoring workshops on how to get a nonacademic or government job, how to write a resume and prepare for an interview. The subcommittee has assembled a roster of philosophers who work outside of the academic profession, and it is about to launch a campaign to increase the number of non-academic employers who advertise positions in the Association's placement publication, *Jobs for Philosophers*.

The last point above raises a question that should be mentioned, if only parenthetically. If academics are frequently unaware of employment opportunities outside of academia, employers in nonacademic fields are unaware of the possible advantages of hiring a PhD trained in a traditionally academic field. It would seem that, in addition to canvassing opportunities, the professional associations might also institute a public relations effort designed to alert prospective employers of the existence of a pool of trained manpower. The attitude of prospective non-academic employers is not necessarily negative, as the following remark by a PhD in English now employed as an insurance salesman testifies:

> My PhD was one of my main selling points . . . The insurance people saw this right off; they knew instinctively why I went through graduate school and I was surprised when they told me that they thought highly of my degree.[23]

There would seem to a mine here that can be worked to the benefit of all concerned.

The remark above is quoted from a pamphlet published by the Modern Languages Association, *A Guide for Job Candidates and Department Chairmen in English and Foreign Languages*. The pamphlet's existence indicates that the MLA,

another professional association whose members have traditionally held academic employment in overwhelming numbers, is aware of the situation and has taken significant steps to remedy it or at least to give the job-seeker the chance to remedy it for himself. As might be expected, the pamphlet is still concerned mainly with academic jobs, but there is also a chapter entitled "Advice to Candidates Seeking Positions Other Than Teaching." This chapter is based in part on the results of a survey sent to 70 English and foreign language PhD's currently employed outside academe, and contains their selected responses and a wealth of practical material for the seeker of a non-academic job. The chapter concludes with a bibliography — scholarly apparatus: — of publications useful in finding employment in an academic setting. The pamphlet as a whole includes appendices devoted to "Additional Sources of Information" and "Sample Letters and Forms." Without wishing to indulge in invidious comparisons between the various professional associations and their placement efforts — and the writer confesses to long-time membership in the MLA — the MLA pamphlet contains information that would be valuable to many, not just to English and foreign-language PhD's.

Another informative pamphlet is *Career Alternatives for Political Scientists*, published under the sponsorship of the Departmental Service Program of the American Political Science Association. The pamphlet first lists saleable skills which political scientists possess, e.g., analyzing situations and policies, marshalling and interpreting numbers, and then briefly discusses specific areas of possible employment in the federal government, state and local government, international organizations, business, the media, interest groups, and research organizations. The specific "how to" information is a bit more specialized than that in the MLA pamphlet, but there is valuable information here for the gleaning.

The American Historical Association has also been active in investigating extra-academic employment opportunities. A pamphlet published by the Association, *Careers for Students of History*, is similar in format and usefulness to the MLA and APSA publications.

In addition, the historians have engaged in extensive coordinating activity among the various historical associations by founding the National Co-ordinating Committee for the Promotion of History (NCC) in 1976. Founding organizations included the American Historical Association the Organization of American Historians, the Southern Historical Association, the American Studies Association, and the New England Historical Association; NCC has since added numerous additional historical bodies to its ranks. The aims of the NCC include the promotion of historical studies, the broadening of historical knowledge, and, of special interest here, the education of employers both public and private to the value of employing professional historians. Also of significance in the employment question are various "resource groups" of the NCC, "organized to promote history and *to provide information about opportunities for historians in the future*" (italics mine). Activities of the resource groups include surveys of the extent to which historians are currently employed in specific fields, identification of growth areas in which historians' skills can be utilized, and identification of training and internship programs aimed at preparing historians for employment beyond the university. Finally, in a series of publications, the NCC disseminates its findings and informs the profession of opportunities in such history-related fields as archives, historical preservation, state and national park historianship, and many others.

What has been given here is only a sampling of the activities of some of the professional associations in the current employment crisis. This knowledge should be helpful to other learned societies and to job-seekers themselves. Certainly, the job-seeker should avail himself of work already done and should seek the advice of his association. It is important, too, that graduate advisors also be aware of the range of possibilities and options open to their students.

Perhaps the most basic need in the search for non-academic employment is what might be called a psychological re-orientation on the part of both the job-seeker and the advisor. The PhD-insurance salesman quoted above referred at one point in his statement to "the cynical pomposity of academia."[24] He may have over-expressed himself, but it is undeniably true that the profession has thought so long and exclusively in terms of teaching and/or research that to think in any other framework requires an effort of the will. But it is an effort which must be made if the interests of the job-seeker, and of the profession, are to be best served.

Trivett ended his article on the PhD job crisis with a section entitled "What to Do." In it he raised many of the points touched upon here, and this article is deeply in his debt.

Another set of recommendations for the future deserves more than passing notice. *Political Science* in the winter of 1976 published an editorial on placement by the APSA Committee of Department Chairpersons. The passage of two years has not affected the general validity of the Committee's recommendations, and despite their length they are worth quoting here in some detail:

> First and most critical, the number of admissions to doctoral programs must be reduced . . . We are well aware of the multitude of departmental reasons for maintaining high graduate enrollments, including the important goal of initiating and continuing affirmative action programs. Consequently, our recommendation is modest: in determining the number of admissions, departments should give a primary place in their calculations to the size of the particular market in which their own PhD's are likely to be placed.
>
> Second, applicants and incoming graduate students ought to be fully apprised of the market situation so they have an opportunity to make informed decisions about their graduate training.
>
> Thirdly, departments must begin to make serious efforts to develop professionally related non-academic employment opportunities for their students. It is not enough merely to make last minute efforts to find slots for those unable to secure faculty positions. The system of values and norms held by faculty and transmitted to students must undergo some changes. The graduate curriculum must be altered to provide students with the option of acquiring skills and knowledge appropriate for nonacademic employment. Graduate students ought to be advised

how one looks for a job in public agencies and private corporations. A rational search requires a sophisticated view of these worlds that often is not held by . . . graduate students. And of course departments must make available resources to build their own nonacademic placement capacities. Here we are thinking of rosters of faculty contacts and alumni in government and industry; detailed descriptions of agencies and programs performing tasks related to the discipline; and special personnel who continuously develop career materials and contacts.

Our final comments are addressed to the problems associated with maintenance of stable faculties in an era of no growth and to the need to continue to attract bright young women and men to our discipline. Departments and institutions tend to grow stale unless there are regular transfusions of intellectual vigor. Such transfusions are derived from the attraction of creative younger colleagues and the retraining and updating of older colleagues. We must devise techniques to attract our share of new talent as we "tighten our belts." In addition, we should encourage older faculty to participate in professional development activities, including exchanges with practitioners from the private and public sectors.[25]

The question of how to maintain intelectual vitality given the present job market is a serious one for the profession. As the APSA Committee editorial suggests, one part of the solution to the problem is to be found in the "retraining and updating" of older faculty so that they may retain their professional vitality or even prepare for other jobs. A future article in Trends 2000 will survey what has been done along this line in the hope that knowledge of such programs and activities will serve as a stimulus to both thought and action.

It is possible that further intellectual stimulation will come in the future partly from outside academia — and precisely from those academically trained persons who find jobs "outside."[4] There is in the profession today a certain distrust of extraacademic employment and its effects on professional standards and integrity.[26] These fears may not be entirely chimerical, but they may be exaggerated as well. An academically trained person who finds non-academic employment can bring new ideas, approaches, and perspectives to bear on his discipline. Surely this can only be beneficial to us all.

FOOTNOTES

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16. "The Impact of Federal Retirement-Age Legislation on Higher Education," *AAUP Bulletin*, September 1978.
17. *Ibid.*, p. 183.
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21. *Higher Education Daily*, vol. 7, no. 1, January 2, 1979.
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23. *A Guide for Job Candidates and Department Chairmen in English and Foreign Languages*. New York: Modern Language Association of America, 1978, p. 28.
24. *Ibid.*, p. 28.
25. "Editorial on Placement by the APSA Committee of Department Chairpersons," *Political Science*, Winter 1976, p. 6.
26. See, for example, "Jobs for Historians Outside Academe," *Chronicle of Higher Education* 63, 2 May 1977, p. 220-229.

Working Together . . . The American Academy Of Arts And Sciences And The History Of Science Society . . .

Unaffiliated Scholars in the History of Science

During the past several years, the American Academy has served as the institutional base for two young historians of science whose work has been directly related to its project on the growth of knowledge in American society — Margaret Rossiter, who is completing an analysis of the career patterns of women scientists, and Mary Winsor, who is examining the history of the Museum of Comparative Zoology at Harvard University as an example of the way in which professionalization and institutionalization have affected the development of the biological sciences. In this way the Academy has helped to make it possible for talented young scholars temporarily without ordinary academic affiliation to apply to foundations and government agencies for research support on approximately the same basis as affiliated scholars. Recently the Academy and the History of Science Society, which has also been concerned about the future of new Ph.D.s who do not immediately find academic employment, have moved to regularize the policy which the Academy had been developing on a case-by-case basis. It should be stressed that the program that is described below is experimental and will be thoroughly assessed after an initial trial period of several years. It has been developed by a committee of the History of Science Society, consisting of Joan Cadden, Ruth Cowan, Henry Guerlac, Frederic L. Holmes, and David Lindberg, working in consultation with several Academy Fellows, especially I. Bernard Cohen. It is hoped that the program will not only help younger scholars in the history of science, a field in which the Academy has been interested for some time, but will form part of a more general Academy effort to consider the problems faced by younger scholars in a range of disciplines. The following is a synopsis of the report of the History of Science Society Committee.

Diminishing job opportunities for Ph.D.s have become a source of concern in most academic fields. A substantial proportion of those who successfully complete graduate work in the history of science, as in many other areas, will be unable to obtain long-term professional employment. A survey carried out in September 1976 by William Coleman for the Committee on Job Opportunities of the History of Science Society revealed that of the total of sixty individuals who received Ph.D.s at thirteen North American institutions from 1974 to 1976, ten were unemployed, four held non-academic positions, and seven held academic term positions not likely to lead to tenure. Thus, if this pattern persists, at least one-third of these qualified scholars will not, or will not for long, hold positions which provide normal institutional support for the type of research for which they have been trained. Projections suggest that this situation is more likely to become worse than to improve during the coming years.

The personal loss to the individuals who find themselves in such straits is too obvious to require elaboration. The dashed hopes and wasted training, the lost opportunities to prepare for some other career, are all too familiar. And the loss to the academic profession which this situation represents should not be overlooked, a loss which is particularly acute for a relatively young field like the history of science. Unlike some academic disciplines, it is not intellectually overcrowded; in order to achieve its promised development, it must lose a few as possible of the scholars trained to contribute meaningfully to its literature.

Current forecasts suggest that that there will be no major expansion in the number of academic jobs open in the history of science during the coming years. Consequently, for a long time there will not be enough teaching positions to support the population of scholars required to fulfill the intellectual potential of the field. It will therefore be necessary to find ways in which those who are not teaching at the post-secondary level ordinarily associated with research can nevertheless continue the scholarly activities they began as graduate students. An important kind of encouragement that established scholars can offer those unaffiliated with academic institutions is moral support — keeping in touch with them, making certain that they are invited to scholarly gatherings, treating them as colleagues rather than dropouts. These things should be done systematically. Yet there can be no encouragement so effective as meaningful financial support. The availability of research grants enables those who hold relatively secure academic jobs to pursue their schol-

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arly work more effectively and rapidly. The regulations of granting agencies often make it difficult for unaffiliated scholars to apply for such funds or to receive them after they have been granted.

To help overcome these difficulties, a joint committee, composed of three members of the History of Science Society and three Fellows of the American Academy of Arts and Sciences will be formed to aid and advise historians of science who do not currently hold academic positions to obtain support for scholarly research. The committee will consult with the National Science Foundation, the National Institutes of Health, the National Endowment for the Humanities, and other possible sources of research funds in order to determine under what conditions each of these agencies would make research grants available to unaffiliated scholars. In addition to collecting such information, the committee will make it accessible to interested historians of science; it will also publicize the availability of such support. Further, it will assist qualified unaffiliated historians of science in seeking grant support and will review grant applications by such scholars prior to their submission to granting agencies. Where appropriate, the committee will suggest to the authors ways of improving the effectiveness of their applications. (The committee will *not* screen out applications. The responsibility for accepting or rejecting remains with the granting agency.)

In the case of agencies that require research grants to be administered through an academic or similar institution which maintains permanent facilities for financial management and accounting, the committee will assist unaffiliated scholars in locating an institution willing to establish an unsalaried connection giving them access to such resources. If the scholar resides near a university whose policy facilitates such arrangements, the committee may inquire about the feasibility of establishing a connection with that institution. The American Academy of Arts and Sciences will itself act as the institutional base for the grants received by those scholars who do not have other suitable arrangements. The Academy will not automatically sponsor all grants which may be approved by the granting agencies, but it foresees being in a position to administer most of them.

In conclusion, it is worth noting that the interests of the History of Science Society and the Academy in this program are complementary, but not identical. For the History of Science Society, the principal benefit would be the potential support for scholarly research in its particular field. The Academy in addition regards the plan as a pilot program, which, if successful, may serve as a model for assistance to unemployed scholars in other disciplines.